

STATE OF CALIFORNIA

SENATE SELECT COMMITTEE TO INVESTIGATE  
PRICE MANIPULATION OF THE WHOLESALE ENERGY MARKET

HEARING RE: REVIEW OF LADWP'S COMPLIANCE

STATE CAPITOL  
ROOM 2040  
SACRAMENTO, CALIFORNIA

TUESDAY, JULY 16, 2002

2:06 P.M.

Reported by:

Evelyn J. Mizak  
Shorthand Reporter

APPEARANCES

MEMBERS PRESENT

SENATOR JOSEPH DUNN, Chair

SENATOR WILLIAM MORROW, Vice Chair

SENATOR DEBRA BOWEN

SENATOR MAURICE JOHANNESSEN

MEMBERS ABSENT

SENATOR WES CHESBRO

SENATOR MARTHA ESCUTIA

SENATOR SHEILA KUEHL

SENATOR BYRON SHER

STAFF PRESENT

IRMA MORALES, Committee Assistant

LARRY DRIVON, Special Counsel to Committee

STEPHANIE RAMIREZ-RIDGEWAY, Legislative Counsel

SCOTT CHAVEZ, Consultant to SENATOR MORROW

DAVID DURAN, Consultant to SENATOR MORROW

WADE TEASDALE, Chief of Staff, SENATOR MORROW

ALSO PRESENT

DAVID H. WIGGS, General Manager

LADWP

PHILIP SHINER, Chief Assistant City Attorney

LADWP

DANIEL D. KUROWSKI, Senior Load Dispatcher

Marketing & Customer Service

Wholesale Marketing Business Unit

LADWP

MARCIA H. KAMINE, Assistant City Attorney

LADWP

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01 P-R-O-C-E-E-D-I-N-G-S

02 --ooOoo--

03 CHAIRMAN DUNN: Why don't we get started. We  
04 understand Senator Bowen is on her way. We believe Senator  
05 Johannessen will be here shortly.

06 We believe we may be short one member today, so  
07 we will act as a subcommittee of the whole. Depending upon  
08 where we find ourselves at the end of the presentations, we'll  
09 decide what, if anything, needs to be done. And if something  
10 needs to be done, how to go forward. But we'll reserve that to  
11 the end, depending upon the presentations.

12 The hearing today is limited to issues relating  
13 to LADWP. There are basically two separate issues.

14 The first one, which I will turn over to Senator  
15 Morrow here in just a moment, relates to the compliance status  
16 of LADWP with respect to the document subpoena that was served  
17 some time ago.

18 And the second issue relates to the submission by  
19 LADWP of a partial transcript of the November 11th, 2000  
20 transactions which we discussed as potentially ricochet-type  
21 transactions at the last hearing that addressed this specific  
22 issue.

23 So, without anything further -- oh, for timing  
24 purposes, it is at least the Chair's prediction, although  
25 oftentimes the Chair's predictions are wrong, that we will  
26 probably not have any further hearings for rest of July, and we  
27 will come back to the hearings when we return in August, that  
28 first week in August. We've got a number that are in

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01 consideration in August. As usual, we'll keep everyone posted  
02 regarding the scheduling of and the topics related to those  
03 particular hearings.

04 Without anything further, let me turn it over to  
05 Senator Morrow with respect to first issue relating to LADWP.  
06 Senator Morrow.

07 SENATOR MORROW: Thank you, Mr. Chairman.  
08 Mr. Chairman, if I might, I'd like to make a few  
09 preliminary comments concerning this portion of the hearing.

10 Senator Dunn, you'll recall last September, you  
11 asked me to assist the committee by assuming the lead in the  
12 investigation of the municipal utility districts in California,  
13 and what role they might have had during the state's energy  
14 crisis.

15 To place things into context, I'd first like to  
16 direct the committee's attention to a year ago, meaning last  
17 summer. You'll recall, we were sparring at that time with  
18 private market participants over subpoena compliance.

19 I can tell you, I was disappointed, but certainly  
20 not surprised at that time that most of those private firms were  
21 reluctant to comply with the committee's information seeking.  
22 The worst, and far away, of course, was Enron. And as it turns  
23 out, a number of those market participants had reason to be  
24 evasive. Again, especially Enron.

25 You may recall, as an example of the seriousness  
26 with which I take the committee's request and the responses to  
27 it by various market participants, I was the member, I think it  
28 was back earlier in the year, that made the motion to hold

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01 certain market participants in contempt for this committee.

02 Now, I'd assumed at that time that the municipal  
03 utilities, being public agencies, would be much more forthcoming  
04 and cooperative than the private generators had been. Some  
05 municipal utility districts have been more cooperative than  
06 others in complying with committee's subpoena requests. Some of

07 the smaller municipalities, due to their resource limitations,  
08 found it difficult to respond quickly, and that's something that  
09 the committee and the committee staff has been sensitive toward.

10 As time passed, nearly all of the subpoenaed  
11 municipal districts have had measurable efforts, or made  
12 measurable efforts, to meet the obligations under the  
13 committee's subpoenas.

14 Only one municipal utility stands out in sharp  
15 contrast to all the others, and only one municipal district has  
16 responded to this committee's investigation in an Enron-like  
17 manner, apparently seeking only opportunity to confuse and  
18 delay. That would be the Los Angeles Department of Water and  
19 Power.

20 I want to state clearly that if a quorum of the  
21 committee were present, I would move again in this case to hold  
22 LADWP in contempt for noncompliance. In the absence of a  
23 quorum, I still would like to lay out the case for  
24 noncompliance. And with the informal approval of the Chairman,  
25 hopefully other members of this committee or subcommittee here  
26 today establish that this subcommittee will recommend a contempt  
27 motion and a vote to the full committee at its next hearing,  
28 which I believe you indicated would not occur until August.

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01 At this point, what I would like to do is refer  
02 to a Special Counsel for the investigation committee, Mr. Larry  
03 Drivon, and also on staff, investigating staff, Mr. Scott  
04 Chavez, who are seated at the table at this time. They're going  
05 to walk us through the chronology in terms of the degree of  
06 compliance and the committee's relationship with LADWP beginning  
07 in June of last year.

08 If you gentlemen could please rise and we'll have  
09 you sworn at this time.

10 [Thereupon the witnesses,  
11 LARRY DRIVON and SCOTT  
12 CHAVEZ, swore to tell the  
13 truth, the whole truth,  
14 and nothing but the truth.]

15 SENATOR MORROW: Mr. Drivon, you want to open up?

16 MR. DRIVON: Thank you, Senator.

17 This matter with respect to documents from LADWP,  
18 and, as a matter of fact, the other municipal utilities, got  
19 started on June the 6th of 2001, when the Select Committee sent  
20 a letter to Mr. Wiggs, General Manager of LADWP, making a formal  
21 request for documents in 72 categories.

22 I would like to fast forward and then go back.

23 On April the 8th, after 42 contacts with LADWP  
24 back and forth, nearly nine months to the day after the initial  
25 requests were made, and after several occasions on which LADWP  
26 indicated that they had fully complied -- which I'll go into  
27 more completely in a moment -- on April the 8th of 2002, LADWP  
28 submitted another 17 boxes of documents which, at that point,

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01 more than tripled the total that they had produced in the first  
02 nine months.

03 On June the 12th of 2001, we got a response from  
04 LADWP indicating that they would have responsive documents  
05 within two weeks, though others might take slightly longer.

06 On June 16th, we sent letters back to them, and a  
07 telephone conversation concerning expected delays.

08 On the 28th of June, LADWP submitted its first  
09 submission, which was one medium-size box of documents  
10 purporting to respond to the 72 categories we had requested.  
11 This box was not indexed and was difficult to get through  
12 because of the poor organization of the material contained in  
13 it.

Two weeks later, on July the 12th, Mr. Wiggs sent a letter to the committee, stating his belief that all documents responsive to the committee's request, other than two numbers, which were available to us from the PX and the ISO, had been produced.

On the 20th, about eight days later, they submitted a small number of additional documents, less than a box.

On September the 6th, having had no adequate response, we, through Rules Committee, issued a subpoena with respect to LADWP and 10 other municipal utilities. The next day, we sent a letter to Mr. Wiggs advising him that the subpoena had been issued. On the 13th of September, LADWP sent a letter to the committee saying that they had received the subpoena and believed that the information contained in their

voluntary submittal, that I previously covered, fully complied with the subpoena.

LADWP failed to provide even those responsive documents that, presumably, it had created between its response previously detailed on the date of this submission.

A month-and-a-half later, on October the 30th, after we had reviewed their document submission to date, we sent them a letter asking that they re-examine their files because what they had submitted to date was insufficient.

About a week-and-a-half after that, on November the 9th, and three days after our deadline, the committee staff spoke with Mr. Tharp regarding their noncompliance. On November the 14th, we sent another letter requesting a log of all documents that they might claim as privileged.

On November 16th, we spoke with Mr. Tharp again concerning these matters. On the 26th of November, we received a letter from LADWP, Stanton Snyder, Assistant City Attorney, raising his concerns about our request for attorney-client privilege index related to some emission credits that they were talking about.

On November the 27th of 2001, after three conversations with them, they sent us a letter responding to our concerns about their document production. Their letter said that we were seeking additional information on document categories 10, 11, 13, and 21. However, they made no reference to the other categories of documents that they hadn't produced during that conversation and communication. They indicated they would send additional documents by December the 14th.

This would be about six months after the first request, Senators.

On November the 29th, we informed Mr. Tharp that LADWP's response to the committee's concerns was inadequate, bordering on possible contempt. Mr. Tharp said, as he did on November 9th, that he believed LADWP had fully complied with the subpoena.

On the 29th again, we sent them a letter reiterating the telephone conversation, and they responded to the effect the LADWP did not claim any documents as privileged, except for information contained in category 8(k), for which a log was to be provided.

8(k) had to do with a settlement involving NOx emissions, and we have -- we have since then received that document or those documents. But as of that time, those were the only documents for which they were claiming a privilege.

On December the 13th, we sent Mr. Tharp a letter indicating to him once again that their compliance was inadequate. He responded to us, asking for more particulars, as they had done on a number of times in the past, and did not

21 during that conversation to our satisfaction adequately  
22 articulate the specific reasons why they were not submitting  
23 documents for many of the 72 categories.

24 On December the 14th, next day, we received a  
25 letter from them stating that he would do an additional search  
26 with respect to items 10, 11, 13 and 21, ignoring again the  
27 other 60 categories that they had at that time not replied to.

28 On December the 20th, five days before  
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01 Christmas -- this matter having started in June -- we received a  
02 letter from DWP addressing our December 13th letter, reiterating  
03 to us that they had, in their opinion, fully complied.

04 I might note at this point that this is still  
05 four-and-a-half months before they produced 17 additional boxes  
06 of information. And since then, we've received considerable  
07 additional information.

08 On January 22nd, the Select Committee received an  
09 additional box of documents, bringing the total to three  
10 medium-sized boxes.

11 In comparison, the Sacramento Municipal Utility  
12 District by that time had provided the committee with 132 boxes  
13 of specifically detailed and indexed documents, together with  
14 gigabytes of data on CDs, and hours of taped transcriptions.

15 Another much smaller municipal irrigation  
16 district had by that time provided us with 15 boxes of  
17 responsive documents, including e-mails.

18 On February 7th, we sent them another letter with  
19 respect to their lack of compliance, detailing it further. On  
20 February 7th again, we sent another letter to LADWP requesting  
21 clarification of their index of responses, because those indexes  
22 were vague and incomplete.

23 On February 19th of 2002, we received a letter  
24 from DWP partially responding to a couple of the letters that we  
25 had sent, and not providing documents as requested by our  
26 document submission letter, nor did they provide an updated  
27 index as requested.

28 On February 22nd, we sent letters to counsel for  
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01 LADWP, as well as Glendale, Burbank and SMUD, to appear before  
02 the committee to review their document compliance.

03 On February 25th, three days later, LADWP sent  
04 the committee an updated index of responses and an additional  
05 box of documents, bringing now the total to four.

06 They did not, however, respond to several of the  
07 questions that we had asked as of February 7th.

08 On the 1st of March of 2002, we got another  
09 letter from them, and we received an additional Federal Express  
10 box of documents. That brought the total to four and a little  
11 bit, if we didn't combine the boxes.

12 On March 4th, we held a compliance hearing for  
13 SMUD, LADWP, Burbank, and Glendale. Representatives of LADWP  
14 were not prepared to answer the committee's questions fully, as  
15 is reflected by the transcript of those proceedings, involving  
16 our questions regarding document compliance.

17 In addition to that, at that meeting there were  
18 direct references to some of the utilities having written over  
19 and recycled computer backup tapes, and the Chair at that time,  
20 and yourself, Senator Morrow, were adamant that that practice  
21 stop because it made it impossible to retrieve e-mails that had  
22 been saved in the backup mode.

23 Four days later, on March the 8th, we contacted  
24 LADWP regarding issues raised at the compliance hearing.  
25 Mr. Tharp apologized for not providing the appropriate  
26 witnesses, and we asked that they fully comply by March the  
27 15th.

28 On the 11th, we sent a letter to LADWP, verifying  
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01 our telephone conversations with Mr. Tharp on the 8th. And on  
02 the 14th, we sent them a letter requesting a list of the  
03 documents identified by staff and responsive to the committee's  
04 subpoena but not yet submitted by DWP, requesting they be  
05 provided no later than March 21st, a week later.  
06 On the 19th, we spoke with Mr. Tharp. He  
07 indicated that LADWP was attempting to provide all of the  
08 documents listed on the committee's March 14th, 2002 letter by  
09 the 21st.  
10 Again, Senators, this is nearly nine months after  
11 we first requested these documents. And this follows several  
12 occasions at which DWP insisted that they had already fully  
13 complied.  
14 On March 22nd, we received a letter from them  
15 concerning some of the March 4th issues, but they did not  
16 respond to our concerns regarding the destruction of backup  
17 computer data tapes pursuant -- that would have held material  
18 pursuant to our subpoena, and we received another Federal  
19 Express package.  
20 On the 26th, we spoke with Kent Noyes of LADWP  
21 regarding document submissions and the committee's  
22 investigation. Mr. Noyes was one of the people who was directly  
23 involved with putting these documents together. At that time,  
24 staff was asked by Mr. Noyes exactly what was it that the  
25 committee was trying to do, and what were they trying to find,  
26 what we were trying to find out, what was purpose for all of  
27 these document requests.  
28 And I am informed by the staffers who spoke with  
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01 Mr. Noyes that essentially the feeling that they got was that,  
02 as of March the 26th of 2002, we had succeeded in removing  
03 ourselves to Square One.  
04 On March the 28th of 2002, we sent a letter to  
05 them, informing them of an April 11th compliance hearing.  
06 On the 28th also, we sent a letter to them  
07 clarifying deposition document subpoenas. We had subpoenaed  
08 documents as part of a deposition subpoena, and we had to  
09 indicate to them that the documents that we were requesting for  
10 the depositions should have been produced by way of the original  
11 document subpoenas and document requests that, by this time,  
12 were nine months old.  
13 On April the 1st, we sent them a letter  
14 requesting response to our March 4th compliance hearing and  
15 certain other matters, and we received three boxes of documents  
16 pursuant to their April 3rd and 4th deposition document  
17 subpoena.  
18 On April the 3rd, we deposed Mr. Ward. On April  
19 the 4th, we deposed Mr. Rozanski.  
20 On April the 8th, the committee received a letter  
21 from DWP responding to our April 1st letter, regarding the  
22 retrieval of e-mails from computer backup tapes, stating,  
23 "LADWP does not have the tools,  
24 expertise, or experience to  
25 recover deleted e-mails that  
26 were not specifically saved."  
27 Particularly in light of the fact that they  
28 apparently, or at least by what they have told us, had  
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01 overwritten those by recycling backup tapes, which is not  
02 unusual in a commercial setting, or even in a public setting to  
03 use same backup tapes over and over again because they're done  
04 in series.  
05 But it is a problem when certain documents that

06 would be responsive to a subpoena have been otherwise deleted,  
 07 and would be available only by way of backup, and then those  
 08 tapes are recycled, thereby essentially destroying the data.

09 We had some more contacts with them on April the  
 10 10th, a telephone conversation with Mr. Snyder, Mr. Noyes,  
 11 Mr. Schumman, and Mr. Ward, informing them that the April 11th  
 12 committee hearing was postponed due to DWP's production of 17  
 13 boxes of documents three days prior to the hearing. That  
 14 production was April the 8th of 2002. We needed at that point  
 15 time to go through those documents, and we wanted to give them  
 16 the benefit of the doubt.

17 On April the 12th, we had a telephone conference  
 18 with Mr. Johansen, Assistant City Attorney, Mr. Levesque,  
 19 L-e-v-e-s-q-u-e, of their IT staff, regarding e-mail system and  
 20 backup tape collection storage and recycling. Their IT person  
 21 indicated that each time a backup tape is recycled, the chances  
 22 of document recovery significantly decrease.

23 And at that point, it would be necessary to do a  
 24 Sorokin-style investigation in order to try to retrieve enough  
 25 meta data from the tapes to allow a reconstruction from under  
 26 the superimposed data, and would be extremely expensive. I  
 27 would think that for every gigabyte of data that you were going  
 28 to attempt to do that for, it might cost in the neighborhood of

0013 01 \$100,000 to do a full investigation. And then the chances of  
 02 retrieving those data would be slim.

03 Counsel commented that since DWP had already  
 04 recycled the tapes at least once, there would be no point in  
 05 stopping future recycling of those tapes. Committee staff  
 06 reminded Counsel that Senator Dunn had warned SMUD and other  
 07 municipal utilities about destruction of documents under the  
 08 subpoena during the March 4th hearing. DWP said that LADWP  
 09 would not stop recycling its backup tapes unless they received a  
 10 letter from the committee directing them to do so.

11 That, Senators, was April the 12th, which was a  
 12 month and week after the committee hearing in which that matter  
 13 was discussed on the record.

14 On April the 15th, we reviewed documents from  
 15 Price Waterhouse Cooper relating to their report for LADWP,  
 16 including marketing profit issues.

17 On the 16th, we received a letter from DWP  
 18 regarding their April 12th teleconference with the Select  
 19 Committee regarding DWP's e-mail system.

20 On April the 18th, the committee sent a letter to  
 21 LADWP requesting that they cease recycling all computer backup  
 22 tapes that might contain documents responsive to the subpoena.

23 On April 23rd, five days later, we had a  
 24 telephone conversation with Stanton Snyder. He indicated that  
 25 during the first week of May, DWP would submit 8 CDs containing  
 26 thousands of e-mails from various LADWP employees.

27 This now is about ten months after the initial  
 28 document request.

0014 01 April the 24th of 2002, we sent them a letter to  
 02 they and other municipal utilities requesting information on  
 03 their e-mail computer backup systems, and again requesting they  
 04 cease recycling backup computer data tapes that might contain  
 05 material responsive to our subpoena.

06 On April 24th, Mr. Noyes, LADWP, informed the  
 07 Select Committee that DWP had purchased a new computer -- had  
 08 purchased new computer backup tapes in response to Senator  
 09 Morrow's April 18th letter. DWP would set aside the old backup  
 10 tapes and use new backup tapes in their place, but that would  
 11 not be effective until Friday, the 26th, eight days after our  
 12 written request, and a month and three weeks after the matter

was first discussed in hearing. And the municipal utilities then present, which included LADWP, were specifically cautioned by the Chair not to do the recycling of the tapes.

On April the 26th -- excuse me -- on May the 7th of 2002, we received a letter from DWP responding to our request for e-mails that might fall under the attorney-client privilege. What we wanted from them was a privilege log. They provided us with a seven-page list of names and dates with no other information. That was a totally inadequate privilege log.

Privilege logs should contain enough information that you can make some kind of a decision as to what that particular document might address, at least in general terms.

And pursuant to the law of the Constitution and the rules of the Senate, in such a situation, if there is a claim of privilege, and a question comes up as to whether

privilege will be allowed by the committee, the Chairman of the committee is empowered to conduct an en camera review. But without a lot of additional data concerning those claims of privilege which they were now raising, it would be impossible to even get to that point.

Mr. Snyder provided the committee with a list, he said, to help the committee.

On May the 8th, the next day, we received a second letter containing an additional list of privileged e-mails. The second log didn't contain -- it was similar to the first, in that it didn't contain a description of the e-mails, a recipient list, or other information adequate to judge the claim of privilege.

Again, on May the 8th, during a telephone conversation with staff, DWP indicated they would not provide the committee with the 8 CDs containing thousands of e-mails as previously promised on April 25th, during the conversation with staff. Instead, they were going to print out, submit these e-mails in hard copy.

The significance of that, they informed us at that time that they felt that was necessary in order for them to determine whether or not there were attorney-client privileged or otherwise privileged documents in that list. That, of course, can be done during the time that a compilation is made on a CD. That's been done by a number of market participants.

The significance of providing them in hard copy versus computer word based -- in a word based way is that it makes it virtually -- it makes it impossible for us to do a

computer-based word search of those in bulk. I mean, if you have them in a word format, you can direct a search, as we learned from Mr. Sorokin in the Enron issue, for particular words or phrases that might be used, and you can search a great volume of material in a very short period of time.

If the material is produced in hard copy, of course, each word has to be read individually, and each page looked at individually. And as a man who has considerable experience in doing exactly that in major document cases, as does the Chair and other members of the committee, after awhile you forget what it is you were looking for when you started looking. So, it's a significant additional burden.

He, in addition to that, was very hesitant about providing us a log, but said he was going to think about it.

On May 17th, the Select Committee sent a letter to LADWP requesting sworn responses to our interrogatories regarding Enron-type transactions.

Six days later, on the 23rd, we received a bunch of redacted e-mails and three boxes of nonredacted e-mails.

20 Redacted e-mails, that is an acceptable way, or  
 21 is acceptable to some and probably to us, of providing the  
 22 equivalent of a privilege log, because that would leave us with  
 23 a sender, a recipient, and an address line, and that's basically  
 24 what a privilege log should contain. So, that was a helpful  
 25 thing, three boxes, of course, of nonredacted e-mail.

26 On May 23rd, we sent them a letter requesting  
 27 complete attorney-client privilege logs identifying information  
 28 categories the committee requires to properly evaluate the

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01 claims of privilege. The next day, we received a letter from  
 02 DWP regarding the committee's ongoing attempts to obtain a full  
 03 privilege log and some specific things involving NOx credits.

04 On May the 29th, we received a letter from DWP  
 05 identifying two boxes of e-mails and transaction confirmation  
 06 submitted to the Select Committee.

07 The next day, on the 30th, we received a letter  
 08 informing the committee that they had sent additional redacted  
 09 attorney-client privileged e-mails. The same day we received a  
 10 letter from Mr. Ward, Wholesale Marketing Manager, responding to  
 11 the Select Committee's interrogatories of May 17th, responding  
 12 in the negative to all of the questions posed in the  
 13 interrogatories, those interrogatories basically having to do  
 14 with the question of trading practices.

15 On June the 5th, we heard testimony from  
 16 Mr. McCullough, an expert who testified before the committee  
 17 regarding the Enron documents the committee had received  
 18 identifying LADWP as a potential participant in Enron-related  
 19 strategies.

20 On the 6th, we deposed Mr. McGuiness, a partner  
 21 with Price Waterhouse Coopers.

22 On June 11th, we sent a letter to DWP requesting  
 23 that they provide the documents relating to their involvement  
 24 with Deathstar or other Enron-related strategies, detailing  
 25 their relationship with Enron and Power Ex, which was also --  
 26 Power Ex was also a part of the Enron memos, and requesting that  
 27 this be in addition to the responses requested in the June the  
 28 5th hearing.

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01 On the 11th as well, after consultation with me,  
 02 staff sent a letter to DWP attempting to clarify them -- for  
 03 them the committee's intent and understanding of the subpoena in  
 04 relation to the documents claimed as privileged. We stated to  
 05 them, to the extent the attorneys in L.A. City Attorney's Office  
 06 representatives are agents of LADWP, all of their documents must  
 07 be produced or at least listed on a log.

08 Because they had told us that DWP, at one point,  
 09 that DWP is but a department of the City of Los Angeles, and  
 10 that when we requested material from that department, that they  
 11 did not consider it to be a request encompassing other  
 12 departments of the City of Los Angeles, such as the City  
 13 Attorney's Office, even though the City Attorney's Office, of  
 14 course was involved with DWP in terms of advising them.

15 So, we were attempting to clarify that for them.  
 16 On June the 13th, two days later, we sent a  
 17 letter to them requesting information and documents relating to  
 18 or concerning Perot Systems.

19 Four days later, on the 17th, we received a  
 20 letter from DWP with respect to the Perot Systems documents.  
 21 DWP produced a letter from the Board, a Board Resolution, Perot  
 22 Systems contract, and End of Engagement Report, stating that  
 23 producing other documents to the committee would be unnecessary  
 24 and unduly burdensome.

25 On June the 18th, we received a letter from DWP  
 26 responding to the committee's June 13th letter regarding

27 documents covered under the committee's subpoena, which is by  
28 this time almost a year old, and the completeness of DWP's

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01 attorney-client privilege log.

02 Again, I think that the redacted e-mail strategy  
03 is probably adequate with respect to a privilege log, presuming  
04 that it's complete.

05 And they indicated to us that they disagreed with  
06 our position regarding the scope of the documents subpoenaed.

07 Again, on the 18th, we received another letter  
08 from DWP responding to our June 11th request for documents  
09 related to Enron and Power Ex. They claimed they didn't have  
10 any transmission or transaction strategies or agreements  
11 specifically related to Enron or Power Ex. LADWP provided a few  
12 documents that identified several documents that were already in  
13 our possession.

14 On the 24th, that would be six days then later,  
15 the Select Committee sent a letter to DWP requesting their  
16 definition of the term "ricochet."

17 On the 25th of June, this is now three weeks ago,  
18 the Select Committee sent a letter to Mr. Wiggs, General Manager  
19 of DWP, pointing out several serious errors that DWP had made in  
20 a press release regarding our investigation. I believe that was  
21 sent out over your signature, Senator Morrow.

22 On June 25th, the Select Committee received a  
23 letter from DWP attempting to explain their understanding of the  
24 term "ricochet," and their November 11th, 2000 transaction with  
25 PGET.

26 On the 25th, the Select Committee had a telephone  
27 conversation with DWP's counsel regarding their definition of  
28 ricochet, and a taped conversation that DWP requested to play at

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01 the June 27th, 2002 hearing.

02 By this time, as you know, Senators, we had  
03 received from other market participants taped recordings, or  
04 transcriptions of tape recordings concerning transactions that  
05 had taken place involving DWP, and we were preparing for a  
06 hearing on that point.

07 Mr. Snyder indicated he intended to play a  
08 recording of a conversation between ISO and DWP at Thursday's  
09 committee hearing, suggesting that the recording would  
10 demonstrate the ISO had full knowledge of the December [sic]  
11 11th transaction and approved of it.

12 We informed him that we would need a copy of the  
13 tape prior to the hearing. He declined to provide a copy,  
14 citing various reasons, including our unwillingness to consult  
15 with him prior to going to the press, the importance of  
16 providing DWP with a fair hearing, and the fact that he is only  
17 in possession of one copy of the tape.

18 Two days later, I asked for a copy of the  
19 transcripts and audio tape of the telephone conversations that  
20 DWP intended to play at the committee hearing. They informed me  
21 that they would provide a transcript by noon, and they did.

22 Committee staff learned that DWP would not  
23 provide a timely copy of the transcript of the audio recording  
24 prior to the hearing, other than the one I just talked about,  
25 and that DWP had by that time already provided a copy to the  
26 press.

27 During the follow-up conversation with committee  
28 staff, DWP counsel informed staff that they would not give a

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01 copy of the tape to staff because counsel retained the only  
02 copy. We requested to hear the tape. They said that the staff  
03 could listen to the tape at a restaurant near the Capitol, but  
04 only after signing a written agreement that DWP would be allowed

to play the tape during the committee hearing.

On the 1st of July, that's following the hearing, staff received a letter from DWP requesting they provide DWP with documents, Bate-stamped numbers 1 through 96, as presented during the committee's June 27th hearing. Some of those documents were covered by confidentiality concerns with other market participants, and we wouldn't be able to produce those to them in any case.

On July 1st of 2002, in a conversation regarding Perot Systems documents and DWP's lack of compliance, DWP counsel indicated that they would not waive confidentiality on the documents received by the committee from Perot because counsel was unaware of the specific documents in the committee's possession.

Second, counsel would not give the committee additional Perot-LADWP documents because he didn't think they were pertinent to the committee's investigation of Perot.

On July in 9th, we met the representatives of Manatt, Phelps, who were outside counsel now retained by DWP with respect to these matters.

On the 10th, five days ago or six, we met with representatives from Manatt, Phelps involving compliance issues.

Further on the 10th, we sent a letter to

Mr. Delgadillo requesting that he and other DWP employees be able to answer document compliance issues before a hearing on this date, July 16th, to answer questions with respect to their compliance.

On July 12th, the committee received a letter from Mr. Shiner, that's two days later, Chief Assistant City Attorney for Water and Power, confirming a discussion with committee staff that Mr. Shiner would attend the July 16th compliance hearing, that Mr. Delgadillo would not be present, and that Mr. Shiner would represent DWP on behalf of the City Attorney.

That brings us to date.

SENATOR MORROW: Thank you, Mr. Drivon.

Mr. Chavez, do you want to add anything yourself?

MR. CHAVEZ: Thank you, Senator Morrow.

As you're aware, this isn't the first time that we've discussed problems with LADWP document compliance. On four separate occasions, beginning in November, the end of November 2001, because of LADWP's noncompliance, and their insistence five different times that they had fully complied with the committee's subpoena, we had discussed holding a document compliance hearing.

However, at that time, given the recess and the holidays, we decided not to go for a hearing and to continue to pursue documents through our interactions.

Again, approaching March 4th, our first official compliance hearing, we talked about LADWP's lack of compliance. And we had thought at that time that by correspondence, that we

could continue to get them to produce documents. They had been producing documents as a result of our correspondence on two separate occasions. So, at that time you had decided not to pursue it.

Again on April 11th, you scheduled a committee hearing to review LADWP's compliance. A few days before that hearing, you had -- we had, the committee, had received 17 boxes of documents that were responsive to the committee's subpoena, identified by staff, but hadn't been produced.

The committee postponed that hearing to give staff time to review the documents.

After review of those documents, we found that there were still missing documents. So again, we were seeking an April 30th, 2002 committee hearing on LADWP's compliance. Mr. Stanton provided -- suggested he would provide the committee with 8 CDs containing thousands of e-mails. Based upon that, we had postponed the hearing again.

And then, events had occurred in which the committee was forced to review Mr. McCullough's information, Perot Systems, the interrogatories, and we left LADWP's compliance issues behind.

But now, after reviewing their documents, after the recent transcript incident, you have before you the evidence of LADWP's lack of compliance with this committee.

I'd like to compare LADWP's compliance with SMUD, if I may.

The Sacramento Municipal Utility district, SMUD, had provided 132 boxes of highly organized, indexed, and

bate-stamped documents, gigabytes of data on CDs, and hours of audio tapes. Most of that information was available to the committee staff by November 2001.

In comparison, LADWP, by the end of November 2001 had one box of documents, and had five times asserted that they had fully complied with the committee's subpoena.

SMUD was timely in their correspondence. They were very helpful in helping the committee understand the documents that were in the repository and at hand, while LADWP responded to the committee's requests in an unorganized and untimely manner.

SENATOR MORROW: If I might go a step further with SMUD, of course, being the second largest municipal utility district in the State of California, in comparison with the other municipals, how many municipal utility districts did the committee present subpoena requests to, and how would you compare their compliance with that of DWP's, Mr. Chavez.

MR. CHAVEZ: Well, kind of see the -- there's a spectrum of responsiveness to the committee's subpoena. You have LA at the one end, the bottom end, and you have SMUD and a few other munis at the higher end, with the rest of the munis somewhere in between.

SENATOR MORROW: You and I, and members of the staff, we've had several conversations, not just on compliance, but actually on the on issue. I mean, we've been on the edge of recommending a contempt vote in this committee for sometime. I think that's been conveyed to DWP at one time or the another.

What's the history of that?

MR. CHAVEZ: Well, Senator, on numerous occasions, as evidenced by our chronology, we have had communications with LADWP regarding compliance issues. As you can see in November of 2000, beginning October of 2001 through July 10th, 2001, we've had issues with their compliance.

Mr. Tharp initially was handling LADWP's contacts with the committee. Mr. Tharp, although very friendly and cordial, did not provide the documents, and made it difficult for the committee to find those documents.

The committee -- essentially, most of the municipal utilities, when they commented about the subpoena, they commented on the breadth of the subpoena, and that they'd have to send everything and the kitchen sink, and they did; most of them did. And that gave us an opportunity to review the documents and to decide how they complied.

In LADWP's case, they essentially, from on our interaction, it was like, you tell us what you think you need

19 from us, and we'll send it to you.

20 Now, we did a number of things to identify  
21 documents that LADWP had. We, one, reviewed their documents,  
22 found other titles of documentation within their submissions,  
23 then we compared LADWP's submissions to that of other municipal  
24 utilities. Although each municipal utility has a different way  
25 of recording records and transactions, there are some  
26 similarities in the type of data that each collect.

27 So, based upon that, we then identified documents  
28 and submitted those documents in writing to LADWP and requested

0026 those.

01 So, most of LADWP's documents that we've received  
02 to date has been because of committee staff investigating,  
03 asking, identifying, rather than LADWP making a good faith  
04 effort to review their own documents and submit those to the  
05 committee.

06 SENATOR MORROW: Another question.

07 I know that DWP on many occasions has expressed  
08 to you and other members of the committee and committee staff  
09 that they were unclear as to exactly what the interrogatories  
10 and the deposition requests, the 72 categories and the like,  
11 what we were requesting. They seemed confused or lacked  
12 clarity.

13 How common an experience was that among the other  
14 utilities?

15 MR. CHAVEZ: Some of the municipal utilities had  
16 difficulties identifying documents that would be responsive.  
17 They didn't know if they fell under the scope, and they asked.  
18 But generally, they submitted just about everything they had on  
19 those particular categories, or they would give us access.

20 For example, NCPA provided a number of documents  
21 in their immediate repository, and then gave us access to a 100-  
22 plus other boxes worth of documents on a day's notice if we had  
23 so requested that information.

24 SENATOR MORROW: Any members of the committee  
25 have any questions of Counsel? Senator Johannessen.

26 SENATOR JOHANNESSEN: Thank you.

27 You know, I'm not an attorney, so please forgive

0027 me for that. But as a country boy, I understand horse pucky  
01 when I step in it.

02 The interrogatories and subpoena requests appear  
03 to not have been complied with. We shouldn't have to go into  
04 forensic research to find these documents that we are  
05 requesting. Although, I'm sure in the universe where documents  
06 were distributed, they're there somewhere.

07 And basically, what this committee is being told  
08 is that it's just put an undue burden on the DWP to produce  
09 these kind of documents. And in fact, from the sound of it,  
10 there is no clarity of what we need.

11 The problem I have with that, is that everyone  
12 else seems to understand it except for DWP.

13 The question then is, what does it take to make  
14 them comply with this? And unless someone can tell me what it  
15 is that they don't understand of the information that we are  
16 requesting -- apparently everybody else understood it. They may  
17 have been dragging their feet like Enron and a few other ones.  
18 They've been dragging their feet. I understand that from an  
19 attorney's standpoint, I suppose, that's the game as usually  
20 played.

21 But unless they can show definitive, they can  
22 show exactly what it is that they don't understand, I think it  
23 has been long enough. It has been long enough.

24 I certainly would consider contempt, if that is

26 the request of the Chair.  
 27 SENATOR MORROW: I know that counsel have gone  
 28 through, not in every single one, but there's nearly a hundred  
 0028 contacts between committee staff and DWP. That doesn't count  
 01 all the other dozen or so other municipal utilities that they're  
 02 dealing with, and Enron, and all the other market participants.  
 03 So, I'm of the opinion with regard to the level  
 04 of staff, and expense, and commitment, when you compare our  
 05 staff, compare that to DWP, I'm not very much persuaded in that  
 06 regard.  
 07 I think your question was a rhetorical one,  
 08 Senator Johannesen, which I appreciate.  
 09 If Counsel want to comment on that, you're  
 10 entirely free to.  
 11 SENATOR JOHANNESSEN: Well, the thing that  
 12 bothers me as a laymen, not having the legal qualification to  
 13 make these kind of judgments.  
 14 SENATOR MORROW: Any other questions of  
 15 Mr. Chavez or Mr. Drivon at this point?  
 16 SENATOR JOHANNESSEN: Yes, and that is that the  
 17 documentation that we have had received from other sources, does  
 18 that indicate that DWP in fact have these kind of documentations  
 19 in their possession and are not willing to give it up?  
 20 MR. DRIVON: Well, I think that the most clear  
 21 example of that, Senator Johannesen, will actually be the  
 22 subject of the next part of this hearing.  
 23 The short answer to your question is yes. And I  
 24 think that complete illumination of that point will be coming  
 25 shortly. I consider it to be very important and very  
 26 disturbing.  
 27 SENATOR JOHANNESSEN: Thank you.  
 28  
 0029 SENATOR MORROW: Unless there are any other  
 01 questions by the members at this point, I know that we do have  
 02 DWP here today, at least various representatives. Perhaps we  
 03 can call those, if they care to come up, or wish to come up, at  
 04 this point to the committee table.  
 05 I think there are two here. If you want to stay  
 06 there, you're welcome to.  
 07 Please come forward, gentlemen.  
 08 If you would, begin by stating your full name and  
 09 your position for record.  
 10 And by the way, if you have a business card, if  
 11 you can give that to our court reporter, Evelyn. Thank you.  
 12 Before we begin, please stand and be sworn.  
 13 [Thereupon the witnesses,  
 14 DAVID WIGGS and PHILIP SHINER,  
 15 swore to tell the truth, the  
 16 whole truth, and nothing but  
 17 the truth.]  
 18 SENATOR MORROW: Please state for the record  
 19 your name and your position.  
 20 MR. WIGGS: Yes, Senator Morrow.  
 21 My name is David Wiggs. I'm the General Manager  
 22 of the Los Angeles Department of Water and Power.  
 23 With me is Philip Shiner, who's the Chief  
 24 Assistant City Attorney for the City of Los Angeles and the  
 25 attorney that is attorney primarily responsible for the legal  
 26 work at the Department of Water and Power.  
 27 I appreciate the chance to be here today. And  
 28  
 0030 really, I came up for two reasons.  
 01 One, I wanted to hear specifically what I have  
 02 heard, and what is going on, and what your concerns are.

04 And secondly, to try to maybe answer the question  
05 that was asked by the Senator, what we can do about this.

06 I frankly am disturbed about what I hear. I'm  
07 not happy about what I hear.

08 You can obviously understand that the report that  
09 I get from our staff and the City Attorney differs dramatically  
10 from what you're hearing, but I'm here to tell you, I don't care  
11 about that.

12 What I do care about is cooperating with the  
13 committee and getting you the information you need. I have  
14 absolutely nothing, nor does the Department, to hide in this  
15 matter. I wasn't even here during this timeframe, neither was  
16 the Mayor or the City Attorney.

17 From my perspective, we'd like to get this  
18 cleared up as you would. We'd like to give you everything you  
19 need so you can finish your investigation.

20 I have been told in the investigation I have  
21 done, and the people I've talked to, I don't believe the  
22 Department did anything improper during this period of time, but  
23 there are thousands and thousands of transactions, so I can't  
24 absolutely commit that to you.

25 But what I can commit to you is, I have made some  
26 changes to see if we can begin to get this where it should be  
27 and get you the information you need.

28 First, Mr. Shiner will take over as the lead

0031 attorney for this matter going forward.

02 Second, I've hired some additional personnel and  
03 authorized overtime so we can process these data requests  
04 sooner.

05 We've also gone, with the Mayor's consent, and  
06 hired an outside law firm, Van Ness, Feldman, to do a separate,  
07 independent audit of the Department's policies, procedures,  
08 records. All of that will be available to you as soon as it's  
09 complete. Now, they're working on that through this next  
10 month. Should be done no later than September.

11 I know in listening and looking at the press,  
12 there's issues again about what we produced, and the tapes and  
13 the transcripts from the last -- a couple weeks ago. In my  
14 discussions with the people, I think there were some honest  
15 mistakes made. I saw no intent on anybody's part to hide  
16 anything from the committee.

17 Those individuals are here today to respond to  
18 your questions and answer you, and see if you get comfortable in  
19 that regard.

20 SENATOR MORROW: I only have one question myself,  
21 to be honest with you. That question is whether or not you and  
22 your representative here today can assure this committee that it  
23 has produced all the documents that the committee has requested  
24 to date?

25 MR. WIGGS: What I was going to have Mr. Shiner  
26 do, if that's okay with the Senators, is to go through where we  
27 think things stand, and what we have tried to do to expedite,  
28 and where we are exactly on the rest of this process. He can do

0032 that now, if you'd like.

02 SENATOR MORROW: I want him to keep in mind the  
03 time here. Just so the committee knows, I know that Chairman  
04 Dunn is on a short time screen here and has to leave at 3:30. I  
05 want everybody to be aware of that. If you can expedite your  
06 comments --

07 MR. WIGGS: I think he can do this very quickly  
08 as to where we think it stands.

09 SENATOR MORROW: My question is, I want to know  
10 whether or not you can state with any assurance that DWP has

11 complied with the committee's document requests, and if not,  
12 why?

13 MR. SHINER: First thing I should do is, I am the  
14 Chief Assistant City Attorney for Water and Power, which means I  
15 manage the Legal Division at the Water and Power, at the  
16 Department of Water and Power.

17 I came on to this project -- well, I have general  
18 knowledge of what has been going on since the committee's first  
19 request. I really don't have specific knowledge, and I can't --  
20 I can't address each one of these letters, and pieces of  
21 correspondence, and conversations that have been listed for  
22 you.

23 I can say that I am -- since about two weeks ago,  
24 I've become personally involved in this. And my task is, and my  
25 goal is, that we will have what this committee wants as soon as  
26 we can get it.

27 My understanding is that what is presently owed  
28 to the committee are some e-mails out of our traders

0033

01 organization. My understanding is that there were 34,000  
02 e-mails; 5,000 have been provided to this committee; 8,000 more  
03 will be provided this week; 6,000 by next week; and originally  
04 it was going to be 15,000 by the end of the month. That would  
05 be the total.

06 I think we have just this morning developed a  
07 system whereby we can provide approximately 9,000 of those  
08 e-mails maybe by the end of this week in CD form.

09 The process has been burdensome, as I understand  
10 it, generating the redacted e-mails, as Mr. Drivon has  
11 indicated, as an adequate way to provide these e-mails. That is  
12 the process we're going through, and I think we can complete  
13 that by the end of the month.

14 I don't know of any other outstanding issues at  
15 this point.

16 SENATOR MORROW: Any other questions at this  
17 point, any members?

18 I mean, forgive me, and with all due respect,  
19 Mr. Wiggs, it was like deja vu hearing your statement here  
20 today, as of the committee's testimony that we heard I think  
21 last Thursday.

22 While I appreciate that I'm hearing that you can  
23 provide these e-mails by the end of the month, it's almost a  
24 year-and-a-half that we've been involved in this process. So,  
25 that doesn't, at least speaking for me, doesn't gain a whole lot  
26 of the sympathy in terms of my consideration on the issue at  
27 hand, which I disclosed, and that is the issue of contempt, when  
28 I first opened up this hearing.

0034

01 The only quandary that I'll have, I'll be quite  
02 frank with you gentlemen, it's the only question I have, and  
03 it's in my own mind. The quandary that I have is whether or not  
04 this lack of compliance thus far is as a result of an  
05 intentional strategy.

06 At least from my own background as an attorney  
07 dealing with discovery, I can tell you, I know that it can be a  
08 strategy.

09 Or whether or not the degree of noncompliance is  
10 simply representative of a disorganized and dysfunctional  
11 organization.

12 That's the only question I have at least in my  
13 mind.

14 I'm not sure if I've opened it up. Are there any  
15 further questions at all at this point? Mr. Drivon.

16 MR. DRIVON: Senator Morrow, I'd just like to  
17 remind the committee of what the result of this has been with

18 respect to the committee's resources.  
 19 I was sitting here a moment ago, trying to run  
 20 through in my mind, as we would ordinarily do in private  
 21 litigation, what to say about that.  
 22 I would remind you, Senator, and the others, I  
 23 know you already know, Senator Morrow, that you have had two  
 24 staff fully emersed in the utilities issue. I am told that  
 25 about 75 percent of their time was spent arguing with LADWP on  
 26 on these issues and trying --  
 27 SENATOR MORROW: There was actually three staff.  
 28 MR. DRIVON: And then, in addition to that, you  
 0035 had an attorney assigned to this project, and the majority of  
 01 his time dealt with LADWP issues.  
 02 In addition to that, some of your regular Senate  
 03 staff has also been involved with this.  
 04 I will also say that my -- I have had  
 05 involvement. And although my cost to the Senate is a dollar a  
 06 month, I think that my time has greater value than that,  
 07 although Senator Dunn will argue.  
 08 CHAIRMAN DUNN: That's up for debate.  
 09 SENATOR MORROW: We're not renegotiating.  
 10 [Laughter.]  
 11 MR. DRIVON: The net cost of this in terms of  
 12 resources to this committee, you know, has got to be many  
 13 thousands of dollars. That doesn't count the aggravation, nor  
 14 does it count the time of the committee members itself and the  
 15 Senators in preparing for these numerous hearings, which always  
 16 result in huge, thick, binders full of information, which has to  
 17 be reviewed by each member of the committee, or at least should  
 18 be, and in many cases, actually is.  
 19 So, there is an enormous cost of this kind of  
 20 problem.  
 21 And it is of very little consequence to me to  
 22 hear what I, you know, believe is a sincere explanation by Mr.  
 23 Wiggs with respect to future conduct. That doesn't replace what  
 24 we've had to spend.  
 25 SENATOR MORROW: I would only add, at least as my  
 26 observation thus far, gentlemen, that whenever we get any  
 27 compliance at all to any degree, it only comes after a public  
 0036 flogging of DWP. And even then, the results are very minimal at  
 01 that.  
 02 Mr. Chairman, I think it's clear, at least in my  
 03 mind, and I think by the chronology gone through by counsel here  
 04 today, that LADWP's individual actions certainly in their  
 05 entirety are representative of an uncooperative response to the  
 06 committee's requests, and its subpoenas, and clearly  
 07 contemplates and constitutes contemptuous behavior.  
 08 I know that attempts by Enron and other private  
 09 generators to stall, to hinder, and to otherwise delay this  
 10 committee's investigation was not tolerated by this committee,  
 11 nor in this case, frankly, should it be tolerated by DWP or any  
 12 other municipal utility district.  
 13 If anything, I think they're held to a higher  
 14 standard as a public entity.  
 15 I would urge the subcommittee to support a  
 16 contempt motion, or recommend to the full committee a contempt  
 17 motion.  
 18 I know that DWP at least professes to continue to  
 19 comply, and by the end of the month, we should have thousands of  
 20 more e-mails.  
 21 I would request, and I think the committee should  
 22 make a recommendation here. You've indicated we're not going to  
 23 have a full hearing of the full committee until, I guess, early  
 24

25 next month anyways. Perhaps, if the committee made its  
26 recommendation subject to contempt at this point, but I would  
27 entertain such a motion. That's where I'm coming from.

28 MR. WIGGS: Mr. Chair, if it's appropriate, I  
0037

01 would like to respond.

02 SENATOR JOHANNESSEN: I will move the motion.

03 CHAIRMAN DUNN: All right.

04 Mr. Wiggs.

05 MR. WIGGS: I would like to respond to Senator  
06 Morrow's question, if I might, and at least I can absolutely  
07 assure you from my perspective down, there has never been, nor  
08 will there be, attempts that I'm aware of to purposefully slow  
09 down any strategy, anything to do with that.

10 Now, my direction from the beginning has been to  
11 cooperate and work with the committee. You know, believe it or  
12 not, my staff believes they have tried to do that. Obviously  
13 not effectively with your staff, and maybe it is question of not  
14 being well organized, and not being in a position to respond  
15 like we should.

16 I can tell you, coming from private industry that  
17 ran a utility company that's used to doing nothing but  
18 regulatory work -- in fact, I was a regulatory attorney for ten  
19 years -- it takes entire staffs to respond the way they should  
20 respond, the way to do it quickly. This company simply does not  
21 have that. And they lost about 2,000 people a couple years  
22 ago. And we clearly are behind the curve on doing that.

23 That's not by way of an excuse, but that's what I  
24 believe is part of the problem.

25 What I'm saying to you, though, and you certainly  
26 should go forward, and whatever needs to be done on what we've  
27 done in the past, you should certainly and will do.

28 But we're going on to make this right and get it  
0038

01 done and completed with you, because we have absolutely no  
02 reason not to. It's in my best interest and the Mayor's best  
03 interest. He's given me that direction, and we will get these  
04 answers to you, and whatever other answers you need to complete  
05 this process, and see if there's any concerns whatsoever about  
06 what the Department did back in that timeframe.

07 We are part of California. We want to be a good  
08 citizen. We're still selling power now, in fact, to the state.  
09 As of last week, over 1100 megawatts.

10 Again, we hope we can be -- get this behind us.  
11 We can respond to the concerns of your counsel. And I'm  
12 committing to you personally to stay involved to see that this  
13 is done between now and when your next hearings are in August.

14 CHAIRMAN DUNN: Senator Johannessen, then one  
15 last comment by Mr. Drivon.

16 SENATOR JOHANNESSEN: Thank you.

17 With all due respect to you, you can't believe  
18 how much it sounds like what we have heard as we're going  
19 along. And I understand that. These are some of the things  
20 that we hear all the time: We're doing everything we can; we  
21 want to be good citizens; we want to do all the things.

22 But it doesn't generate what we need. And so,  
23 you get a little skeptical, perhaps, that some stonewalling is  
24 being done.

25 And I can guarantee you that you have  
26 substantially more staff available to you than this committee  
27 has.

28 So, forgive me if I'm being a little skeptical.  
0039

01 I don't mean to insult you. That is not is the intent of this.  
02 I just want you to understand why I am skeptical

03 personally, because I've heard this going over the years, I've  
04 heard this happen.

05 And the only way that I can be convinced that in  
06 fact the sincerity is there is that the documentation and the  
07 things that we need is produced, because we really don't have  
08 the staff that I know of, unless I don't know, Mr. Chairman, we  
09 don't have the staff to continue to go through this, which gives  
10 us very few choices.

11 CHAIRMAN DUNN: Mr. Drivon.

12 MR. DRIVON: Perhaps it might be useful and  
13 productive for myself and either Mr. Wiggs or Mr. Shiner to  
14 discuss the issue of how the committee or the Senate might be  
15 compensated or reimbursed for the resources we've had to expend  
16 in this dental operation, whereby we extracted these documents.

17 CHAIRMAN DUNN: Why don't we do this. Let's hold  
18 any further discussion on this issue.

19 I wanted to raise a second issue, which will be  
20 relatively short. And then we'll make final recommendations as  
21 far as where to proceed at this point.

22 Stay where you are, Mr. Wiggs, and Mr. Shiner,  
23 you can stay right where you are.

24 MR. SHINER: Mr. Chairman, can I just address  
25 something on this last issue for a moment?

26 CHAIRMAN DUNN: Certainly.

27 MR. SHINER: I don't -- I'm not familiar with the  
28 committee's procedures, or with the legislative procedure in

0040 01 this regard.

02 But I would appreciate it if we were given a  
03 chance to perhaps respond in writing to this.

04 CHAIRMAN DUNN: I can cut that short, Mr. Shiner,  
05 because if you count up the noses here, we have four members.  
06 We need five for a quorum. Meaning, we cannot vote on a  
07 motion.

08 There has been a motion by Senator Johannessen  
09 for contempt re: the document production. The earliest we'll  
10 be able to actually take a vote on that is the first week in  
11 August, barring our having another hearing before that, which  
12 is possible, but at least right now I don't anticipate it.

13 I want to give everybody a little break. We've  
14 been having some pretty regular hearings for the past few  
15 weeks.

16 During that time period, assuming that after we  
17 hear the second issue that, in fact, the recommendation of the  
18 subcommittee will be to vote on contempt at the next hearing,  
19 you are welcome to provide any input, et cetera, during that  
20 time period.

21 MR. SHINER: Thank you.

22 CHAIRMAN DUNN: And in fact, when we've done this  
23 before, others who have been in similar position have used that  
24 time period to clarify, clean up, fully satisfy the committee on  
25 all issues.

26 So, your request is inherently built into it,  
27 given the fact we don't have a quorum today.

28 MR. SHINER: Thank you. I appreciate that.

0041 01 CHAIRMAN DUNN: Let me go to the second issue  
02 very quickly.

03 The second issue relates to the transcript that  
04 was submitted to this committee by LADWP. Very quickly, the  
05 background, although I think everyone is pretty intimately aware  
06 of this issue, in mid-June, we discovered a document in NEG's  
07 files, which was an e-mail that referenced potential ricochet  
08 transactions by LADWP.

09 We subsequently scheduled a hearing regarding

this issue a short time later. And just before that hearing, a transcript was submitted by LADWP concerning the November 11th, 2000 transaction which NEG labeled as a potential ricochet transaction.

Again, as most everyone is aware, the committee produced at the time of the hearing, simply because we had just gotten confidentiality waivers, the recorded transcripts of those events from NEG. And when you put the LADWP and the NEG transcripts next to each other, there were some fairly significant inconsistencies.

We could not resolve the issue at that time. Although, and I know Mr. Ward is here, we did have some discussion on the record and under oath about that. And, for example, Mr. Ward stated, and I quote,

"I did want to assure this committee that this transcript was prepared by me and counsel. That while I had some clerical people do the original

transcript, we went back with the tape and tried to verify every word personally on that transcript."

Since we could not resolve this issue at the time of that hearing, we requested, and LADWP quickly granted, access for the committee directly to the original audio tapes of the transactions in question on November 11th, 2000.

My staff in Southern California then typed up a transcript of the entire recording from the LADWP audio tape. This was approximately two weeks ago or so.

In the packet, we've just handed to you a full transcript of the tape recordings on November 11th, 2000.

Scott, is that the full 27 pager?

MR. CHAVEZ: Yes.

CHAIRMAN DUNN: We will make this available, if anybody wants it, via request.

What we've given to Mr. Wiggs and to Mr. Shiner now is the full transcript which contains underlined, italicized portions. In sum, what it showed to the committee is that when whomever at LADWP transcribed their version of it, they omitted what I would label as some critical passages in the transcript that was prepared and submitted by LADWP. I'll give you some examples of that very quickly, not to dwell on it.

Mr. Wiggs and Mr. Shiner, if you'd turn to Page 10. In fact, everything starting on Page 9 that is underlined, which is basically half the page, the bottom half of the page, and everything on Page 10 was omitted from LADWP's version of

the transcript.

Now, LADWP did omit some nonrelevant passages. We have no complaints about. There are all kinds of irrelevant discussions, both of a personal nature and of other transactions that don't relate to what NEG labeled as a potential ricochet transaction. All those irrelevant transactions or discussions are in this transcript as well, and most of those were omitted by LADWP. We have no complaint about that.

I turn to Page 10 of the transcript because there is one very significant passage that we consider relevant and that was omitted. It states, and this is a discussion between Solis and Steve. Most of you will recall, this is PGET and LADWP in discussion, in which it says, "LA Solis," that's Mr. Solis at LA answering the phone,

"Hey Solis, this is Steve, PGET."  
"Hey Steven."

17 Steve then says,  
 18 "Hey man I guess the ISO is  
 19 saying that the schedule can't  
 20 go.  
 21 "Why is that?  
 22 "They're saying something about  
 23 it being a ricochet schedule.  
 24 "A ricochet schedule!?  
 25 "Yeah, I don't understand what  
 26 that means.  
 27 "Have the ISO call me."  
 28 And then it goes on from there.

0044  
 01 The reason I raise this particular one is, it  
 02 seems curious to us that a portion of the transcript that is  
 03 specifically referring to the ricochet transaction is omitted.  
 04 Another example, if we turn to Page 19 of the  
 05 full transcript, this is 19 of a 27-page transcript. This is  
 06 where LADWP's transcript simply terminates. But discussions  
 07 thereafter in the remaining approximately eight or nine pages  
 08 have some very detailed discussion about the, quote-unquote,  
 09 "ricochet transaction," about how ISO is taking the position it  
 10 is taking, what they could do about it, et cetera, many of which  
 11 were found on the NEG transcript that was submitted at that  
 12 time.

13 At least from the Chair's perspective, the only  
 14 thing I can conclude is, there was a deliberate omission of some  
 15 very relevant aspects of the full conversations that occurred on  
 16 November 11th, 2000. Again, the Chair's opinion.

17 In a review of the LADWP version of the  
 18 transcript, it seems, as argued by LADWP at our last hearing on  
 19 this issue, that the discussion was fairly benign, and that any  
 20 belief that a ricochet-type transaction occurred was clarified  
 21 by a reading of the LADWP version of the transcript.

22 When you read the entire transcript, again in the  
 23 opinion at least of the Chair, it begins again to take on a more  
 24 sinister view.

25 I have a number of questions about this. When I  
 26 say number, I don't mean lengthy. We can get to them real  
 27 quickly.

28 But the first thing I want to start with is  
 0045  
 01 something that I find disheartening. The committee through  
 02 Senator Morrow requested that Mr. Delgadillo be here in person,  
 03 Mr. Shiner, as you know. And I realize you advised the  
 04 committee last week that he could not make it.

05 Could you please tell us why Mr. Delgadillo could  
 06 not be present as requested at the committee hearing today?

07 MR. SHINER: I am not privy to his -- his  
 08 reasoning. I can only make assumptions. I have not been told  
 09 what his reasoning is.

10 He sent me in his stead. I'm the person who  
 11 manages the division of -- the Legal Division of the Department  
 12 of Water and Power, and presumably, I know about this sort of  
 13 thing than he does.

14 CHAIRMAN DUNN: I appreciate that, Mr. Shiner.  
 15 No criticism of you in that regard, and certainly, I do not want  
 16 you to speculate about why Mr. Delgadillo is not here if you do  
 17 not know.

18 Did Mr. Delgadillo tell you himself that he was  
 19 not going to be here today?

20 MR. SHINER: No, the message was passed on.

21 CHAIRMAN DUNN: Through whom?

22 MR. SHINER: Through his chief deputy.

23 CHAIRMAN DUNN: Who is that person?

24 MR. SHINER: Terry Bowers.  
 25 CHAIRMAN DUNN: Terry Bowers advised you That Mr.  
 26 Delgadillo would not be here?  
 27 MR. SHINER: I believe it was him It would have  
 28 been him I discussed this with him I think it was him  
 0046  
 01 CHAIRMAN DUNN: I'll pursue that directly as  
 02 Chair of the committee with Mr. Delgadillo.  
 03 If you would, pass on for me, Mr. Shiner, to  
 04 Mr. Delgadillo, we requested his presence in writing because at  
 05 least the committee considers this issue to be one of utmost  
 06 seriousness, and we felt the proverbial captain of the ship  
 07 ought to be here to answer the questions, or at least be present  
 08 during the questions that we have regarding this.  
 09 As you may be aware, Mr. Perot showed up last  
 10 week and testified as to Perot Systems' involvement, even though  
 11 he had limited personal knowledge about Perot Systems' specific  
 12 behavior with respect to the California energy market.  
 13 It is, to be honest, it's rather offensive that  
 14 they simply -- I'm sure you're great, and you know them well,  
 15 the answers well, but simply not -- for Mr. Delgadillo not even  
 16 to advise us by his own letter, his own phone call, that despite  
 17 our request, he wasn't coming, I find offensive.  
 18 Please pass on Mr. Delgadillo, I'll be following  
 19 up on this issue with him directly.  
 20 Sorry to use you as the messenger on this one,  
 21 Mr. Shiner. I know this is not your problem.  
 22 Let me get right to my few questions that I have  
 23 with respect on the transcript itself.  
 24 Mr. Shiner, let me ask you, who is the person  
 25 most knowledgeable about the preparation of the LADWP version of  
 26 the November 11th events?  
 27 MR. SHINER: The person who made the tape  
 28 recording from which the LADWP transcript was prepared is Dan  
 0047  
 01 Kurowski, and he is here to answer any questions you may have  
 02 about how he accomplished that.  
 03 CHAIRMAN DUNN: I believe Mr. Kurowski also put  
 04 in -- which is traditional, it's normal -- some, I don't mean  
 05 sound like this is a bad term, but some editorial comments  
 06 throughout in the transcript.  
 07 MR. SHINER: I don't know that there's anything  
 08 traditional about this, but he, as I understand it, he did put  
 09 in some comments, I think, regarding times, perhaps.  
 10 CHAIRMAN DUNN: The reason I said that is, my  
 11 understanding, talking to some former LADWP folks, is that when  
 12 a transcript is prepared, oftentimes to settle an account  
 13 dispute or something, that there will be such commentary.  
 14 Initially it looked suspicious to me that there were inserted  
 15 comments. It's my understanding that that's not unusual, and I  
 16 can get that from Mr. Kurowski.  
 17 Is Mr. Kurowski here? Why don't you come on up.  
 18 Go ahead, Senator Johannessen.  
 19 SENATOR JOHANNESSEN: Here again, I apologize for  
 20 my lack of knowledge in this area, but the experience which have  
 21 had with transcripts, transcripts ought to be accurate to what  
 22 is there.  
 23 Isn't that what we have, someone taking the steno  
 24 here? Is that what we have tape for? Isn't that the reason for  
 25 it?  
 26 I hope you're not suggesting that personal  
 27 comments in transcripts is normal?  
 28 CHAIRMAN DUNN: Mr. Kurowski, why don't we just  
 0048  
 01 pose that question to you. You've got some -- I don't mean to

02 imply it in a bad way -- but some editorial comment.  
 03 The question is, whether that is the normal  
 04 course of business when you're transcribing trading -- recorded  
 05 trading calls?

06 Before you answer that, Stephanie, we need to  
 07 swear in the witness.

08 [Thereupon the witness,  
 09 DAN KUROWSKI, swore to tell  
 10 the truth, the whole truth,  
 11 and nothing but the truth.]

12 CHAIRMAN DUNN: We have a misbehaving camera  
 13 behind us. I think it's got itself together now.

14 Mr. Kurowski, tells about the editorial comments  
 15 that were inserted by you in the preparation of the transcript.

16 MR. KUROWSKI: I didn't actually prepare the  
 17 initial transcript. What I made was a copy of the audio tape  
 18 from the original digital audio tape that the conversations were  
 19 on.

20 The narrative was -- was extemporaneous. That  
 21 is, as I was recording, I would say, "The upcoming conversation  
 22 has to do with this," or announce a time.

23 CHAIRMAN DUNN: Mr. Kurowski, share with us  
 24 exactly your role in the preparation of the LADWP version of the  
 25 transcript, including who asked you to prepare it, and how you  
 26 went about doing that.

27 MR. KUROWSKI: I'm a senior load dispatcher in  
 28 Wholesale Marketing. There was announcement that there was a  
 0049

01 PGET memo. I believe that came out on about Friday the 21st of  
 02 June. And subsequent to that, there was an article in the  
 03 newspaper, I believe, on the following Saturday.

04 I received a phone call sometime Saturday  
 05 afternoon at home, when I got home, that is, in the afternoon,  
 06 and directed me towards work to try to identify what -- why this  
 07 e-mail may have precipitated, what events might have caused  
 08 this.

09 CHAIRMAN DUNN: Who placed that call to you?

10 MR. KUROWSKI: Actually, I probably ended up  
 11 calling my boss, Mark Ward, because I had notes there that  
 12 somebody had called from work.

13 CHAIRMAN DUNN: Who was it that called from work?

14 MR. KUROWSKI: Probably the senior load  
 15 dispatcher on shift at the time.

16 CHAIRMAN DUNN: And that was who?

17 MR. KUROWSKI: William Kirk Butler.

18 CHAIRMAN DUNN: Would Mr. -- say that name again?

19 MR. KUROWSKI: Kirk Butler.

20 CHAIRMAN DUNN: Would it be normal for that  
 21 individual to call you on an issue of this type?

22 MR. KUROWSKI: Well, he would be -- he'd be the  
 23 communications center. That is, Mark would have called into  
 24 work, tried to identify where I was, and then this individual  
 25 may have called me at home and left messages.

26 CHAIRMAN DUNN: Given that your titles are  
 27 similar to Mr. Butler, why is it you were called in to do this?

28 MR. KUROWSKI: Mr. Butler was working the line at  
 0050

01 the time. That is, actually working the trading desk.

02 While I sometimes do that, I have a staff  
 03 position, and so I'm at Mark's beck and call, essentially.

04 CHAIRMAN DUNN: No one else could have done this?  
 05 I'm just curious why it would be you that they would isolate to  
 06 do this task.

07 MR. KUROWSKI: Well, it was a wholesale marketing  
 08 issue in general. There's probably a number of people who could

09 have actually operated the recorder.

10 Why me? Because the ball was in our court, I  
11 suppose.

12 CHAIRMAN DUNN: You received the call. What did  
13 you do?

14 MR. KUROWSKI: I made my way to work. I -- I  
15 have the e-mail with me at work there, and so I'm trying to  
16 divine what could have possibly happened.

17 I believe my first course of events was to do a  
18 word search over our real-time marketing logs to try to find  
19 some -- try to find "ricochet," or words that might lead me  
20 around to some sort of log entry that would get me someplace.

21 I had, except for the time and date on the  
22 e-mail, I didn't have any real direction to go. I had to start  
23 someplace. So, I started with a word search.

24 Initially I was getting indications that -- that  
25 we'd had issues at the COB with how to deal with transactions  
26 there with the ISO as early as, say, January. So, that sort of  
27 put me in a quandary, because now I have an 11-month period that  
28 I have start looking for information for.

0051

01 It's wide open. Where do I start?

02 So, the first thing I did is grab the tape  
03 associated with this e-mail date, thinking that maybe something  
04 close in time to this e-mail might have precipitated this event.

05 The normal course of events is to go downstairs  
06 to the Grid Ops Senior. That's where the tape machine is  
07 located and the previously recorded tapes are kept. There's a  
08 locked drawer there. Get the key, check out that tape.

09 Between me and the Senior, we load the tape  
10 that -- that brackets that timeframe. Each -- each tape has  
11 about two weeks' worth of -- of recordings on it. And then to  
12 begin a search process to try to locate anything that might be  
13 germane.

14 I did so. I loaded the tape into the tape  
15 machine. I search to -- I started the tape at about two days  
16 before the e-mail date, so roughly 11/10/2000, and I began  
17 listening to conversations that occurred there. That is, I  
18 started at, let's say, at midnight on the 10th, and hit a search  
19 button. The search button allows you to fast forward to the  
20 next conversation, and I would listen to the beginning of the  
21 conversation and try to determine if there was something  
22 important in there, and then hit the search button again, the  
23 "next" button, actually, and keep doing that until I got -- I  
24 got someplace.

25 What I eventually -- when I got very close to  
26 that time, I started -- I started hearing PG&E -- PGET's name  
27 more and more often, and it led me to the conversations that  
28 were around here.

0052

01 CHAIRMAN DUNN: Keep going.

02 MR. KUROWSKI: As I -- when I was doing the  
03 search, I think some information you need to know is that there  
04 are five channels associated with the real-time marketing  
05 desk. Ninety percent of the conversations occur on the first  
06 channel, and so, I searched for conversations until I started  
07 getting indication that I was close, and then -- and kept doing  
08 so, noting times.

09 And eventually, once I had what I thought was a  
10 complete record, I went back and recorded those -- those  
11 conversations.

12 CHAIRMAN DUNN: Okay. How long did your  
13 involvement in this take, not including your drive from home.

14 MR. KUROWSKI: I put in for it.  
15 I would -- I would guess that the whole -- the

16 whole thing might have taken on the order of 10 to 16 hours'  
 17 worth of my time. I would guess that I took something on the  
 18 order of 6 hours on the first day, and a similar amount of time  
 19 on the second day, Saturday and Sunday, roughly the 22nd and  
 20 23rd.

21 CHAIRMAN DUNN: You completed your task on this  
 22 in those two days?

23 MR. KUROWSKI: I thought I'd completed my task in  
 24 those two days.

25 CHAIRMAN DUNN: And what you generated, then, was  
 26 an identification of conversations you believed may have had  
 27 something to do with the NEG e-mail?

28 MR. KUROWSKI: That's correct.

0053

01 CHAIRMAN DUNN: What happened after you  
 02 identified the conversations you believed relevant to that  
 03 e-mail?

04 MR. KUROWSKI: I first identified the  
 05 conversation through scratch notes, and so I had a series of  
 06 times.

07 Then I grabbed a tape recorder, and I went -- I  
 08 backed up and went through and recorded. That is, played back  
 09 into the air and audio recorded on a small cassette each of the  
 10 conversations that I thought were germane.

11 CHAIRMAN DUNN: Then do you have any knowledge,  
 12 once you made the cassette tape, which I think Mr. Snider was  
 13 referring to as the high tech, sophisticated, mechanism at our  
 14 last hearing, that was, I'm assuming, the audio tape you  
 15 prepared?

16 I know you weren't here, but it was basically  
 17 your traditional cassette tape?

18 MR. KUROWSKI: I can only guess that that was  
 19 same tape, yes.

20 CHAIRMAN DUNN: That's what you used to record  
 21 the conversations you identified?

22 MR. KUROWSKI: A regular cassette tape, correct.

23 CHAIRMAN DUNN: Which is what was turned over to  
 24 the committee on the day of the hearing. Let's just operate  
 25 under the assumption that that's the same one that you had  
 26 prepared on those two days that you had put together.

27 I'm assuming you did not have any involvement in  
 28 the actual transcription of the tape you had prepared?

0054

01 MR. KUROWSKI: I was involved in editing -- or  
 02 not editing, excuse me -- re-reading the transcript that we had  
 03 prepared. We had a draft transcript, and we listened to the  
 04 audio tape and verified that the transcription and the audio  
 05 tape matched.

06 CHAIRMAN DUNN: Who did the actual transcription?

07 MR. KUROWSKI: I'm not sure who did the actual  
 08 transcription.

09 CHAIRMAN DUNN: Was it somebody from the City  
 10 Attorney's Office, somebody from LADWP staff?

11 MR. KUROWSKI: I would guess it was a couple of  
 12 different individuals from the DWP.

13 CHAIRMAN DUNN: A couple of different  
 14 individuals.

15 MR. KUROWSKI: That is, I believe -- I can only  
 16 -- I'm going second-hand here. I believe that somebody in the  
 17 City Attorney's Office was charged with coming up with an  
 18 original draft, and then somebody in the dispatch office purged  
 19 through there, went through there -- not purged through there --  
 20 read it again and made sure that -- tried to clean up some  
 21 language.

22 CHAIRMAN DUNN: Once you completed doing the tape

23 recording on the traditional cassette, who did you turn that  
 24 tape over to?  
 25 MR. KUROWSKI: Ms. Kami ne.  
 26 CHAIRMAN DUNN: And that is who?  
 27 MR. KUROWSKI: She's with the City Attorney's  
 28 Office, Marcia Kami ne.  
 0055  
 01 CHAIRMAN DUNN: Okay, I know you're back there,  
 02 but we just need it for record purposes.  
 03 Did you turn it over while at LADWP's office, or  
 04 did you go to the City Attorney's Office?  
 05 MR. KUROWSKI: I believe I went to the City  
 06 Attorney's Office.  
 07 CHAIRMAN DUNN: Was anybody with you at the time  
 08 that you were recording the conversations you had identified?  
 09 MR. KUROWSKI: I may have done some of the  
 10 recording in the presence of other people, but not -- not  
 11 really. Nobody was involved with the process with me.  
 12 CHAIRMAN DUNN: Of the conversations you  
 13 identified, were any of the ones you identified not recorded on  
 14 the tape?  
 15 MR. KUROWSKI: No.  
 16 CHAIRMAN DUNN: Do you have a question, Senator  
 17 Johannessen?  
 18 SENATOR JOHANNESSEN: Yes, Mr. Chairman.  
 19 Again, my apologies, but what I am hearing is  
 20 that you had the responsibility, at least in that two-week  
 21 timeframe, to make the determination of what is or is not  
 22 appropriate, or is not germane, to the question that is being  
 23 asked?  
 24 In your position, you basically took it on  
 25 yourself, or were directed by someone, perhaps the Legal  
 26 Department, I don't know by whom, to make the determination, and  
 27 make the judgment of what was important and what was not? Is  
 28 that what I'm hearing?  
 0056  
 01 MR. KUROWSKI: What we were -- the simple answer,  
 02 I suppose, is yes.  
 03 SENATOR JOHANNESSEN: Oh boy.  
 04 Thank you.  
 05 CHAIRMAN DUNN: Okay. It was your decision as  
 06 far as which conversations were identified as relevant to record  
 07 in the first place; is that correct?  
 08 MR. KUROWSKI: Yes.  
 09 CHAIRMAN DUNN: I know you have probably not seen  
 10 it before, but Mr. Shiner and Mr. Wiggs, if you can give him the  
 11 transcript that we had.  
 12 This is the transcript you heard me describe  
 13 earlier that our staff, Suzanne, who I don't know if you  
 14 interacted with when she went and recorded the whole thing.  
 15 Turn to Page 10, if you would, because I  
 16 understand why a number of the conversations that Suzanne has  
 17 inserted were omitted, because they weren't relevant, including  
 18 discussions about golf games, and all kinds of other things,  
 19 including other unrelated transactions.  
 20 But if you look at the bottom series, that starts  
 21 with "Solis then answers another call."  
 22 I don't know where this one got lost. I don't  
 23 know if this got lost because you didn't identify it as a  
 24 relevant transaction. I don't know if you identified it as  
 25 relevant transaction that subsequently got recorded on your tape  
 26 and was omitted in the transcription process.  
 27 Do you have any idea how that portion of the  
 28 transcript got lost?

0057

01 MR. KUROWSKI: Yes.  
02 CHAIRMAN DUNN: How?  
03 MR. KUROWSKI: The tape has -- has two -- there  
04 are two ways in which these -- there were six conversations that  
05 I subsequently identified that should have been included in  
06 these transcriptions.  
07 CHAIRMAN DUNN: Let me stop you right there.  
08 That you subsequently identified. So, at some  
09 point in time, you returned to trying to identify additional  
10 relevant conversations on the original tape, audio tape?  
11 MR. KUROWSKI: Not only that, but to try to  
12 determine why there would be conversations that somebody else  
13 had that we didn't.  
14 CHAIRMAN DUNN: Okay. So what prompted your  
15 return was our hearing and the production of what I'll label the  
16 NEG transcript?  
17 MR. KUROWSKI: Yes.  
18 CHAIRMAN DUNN: Did someone ask you to return to  
19 review the original tape recordings of the trading calls?  
20 MR. KUROWSKI: Yes.  
21 CHAIRMAN DUNN: Who?  
22 MR. KUROWSKI: Mark Ward.  
23 CHAIRMAN DUNN: Mark is here. Mark testified at  
24 the earlier hearing.  
25 Tell us what you did in response to Mr. Ward's  
26 request?  
27 MR. KUROWSKI: I can tell you that, but what I  
28 haven't finished telling you is how I missed the first six.  
0058  
01 CHAIRMAN DUNN: Please do.  
02 MR. KUROWSKI: I missed three of the calls in one  
03 fashion, and three of the calls in a different fashion.  
04 The first fashion is that there are multiple  
05 channels that are recorded for the wholesale marketing group for  
06 the real-time marketer. All right? Of the five channels, I only  
07 searched the first channel. That is, 90 percent of the  
08 telephone calls are accomplished with one phone device, and that  
09 phone device is recorded on one channel.  
10 There are -- there are multiple phones that this  
11 fella could have used, and some small percentage, arguably 10  
12 percent, are located on these other phones. And I failed to  
13 search the other phones.  
14 CHAIRMAN DUNN: Why?  
15 MR. KUROWSKI: Um, I don't have a good answer for  
16 that. I -- in hindsight, obviously, I should have searched the  
17 other phones.  
18 A particular phone, the fifth phone, the cordless  
19 phone, is used probably 90 percent of the remaining 10 percent.  
20 And that's why -- that's where three of these conversations  
21 were -- were lost at.  
22 CHAIRMAN DUNN: What about the other three?  
23 MR. KUROWSKI: The other three were lost as a  
24 function of searching the tape. That is, I had a lot of -- a  
25 lot of time that I was looking for. And I didn't want -- I  
26 didn't have a lot of time to spend on this. It takes a lot of  
27 time to identify conversations and jump through, even though it  
28 seems like it might be a fast process.  
0059  
01 In the search function, what you need to do is,  
02 once a conversation starts, and you hear that it's the guy  
03 talking about his golf game, you would normally press the "next  
04 button. It would run past the end of this conversation, wait  
05 for one second of silence, and stop at the beginning of the next  
06 sound or conversation.  
07 CHAIRMAN DUNN: It's like pushing the "next"

08 button on your tape recorder in your car.  
 09 MR. KUROWSKI: Yeah.  
 10 CHAIRMAN DUNN: It'll advance forward to the next  
 11 gap.  
 12 MR. KUROWSKI: The next song.  
 13 CHAIRMAN DUNN: Or, if there's a long pause in  
 14 the conversation, it might stop there, too.  
 15 MR. KUROWSKI: Correct.  
 16 CHAIRMAN DUNN: All right.  
 17 MR. KUROWSKI: Unfortunately, if there's not a  
 18 pause, it sees the two conversations that might butt up against  
 19 one another as continuous, and runs across both of those  
 20 conversations, looks again for one-second pause and stops  
 21 there.  
 22 And that's how I lost three of the  
 23 conversations. That is, I would hear the beginning of a  
 24 conversation and realize it -- it had nothing to do with this,  
 25 either a golf game or a different utility was involved, press  
 26 the "next" button, and the tape recorder would fast forward to a  
 27 subsequent conversation, missing the one that had been butted up  
 28 against the conversation that I'd started listening to.  
 0060  
 01 CHAIRMAN DUNN: Okay.  
 02 MR. KUROWSKI: And that accounted for losing  
 03 three of the conversations. So, three of them were lost because  
 04 of lack of one second, and three of them were lost because they  
 05 were on another channel.  
 06 CHAIRMAN DUNN: In your count, there were a total  
 07 of six relevant conversations that were not included in the  
 08 original LADWP transcript?  
 09 MR. KUROWSKI: Correct.  
 10 CHAIRMAN DUNN: Let's go to the one that I  
 11 pointed to on Page 10.  
 12 MR. KUROWSKI: Okay.  
 13 CHAIRMAN DUNN: Do you know which category of the  
 14 two threes this one falls into?  
 15 MR. KUROWSKI: Um, if you could help me out with  
 16 a time, I might be able to. Or if you can give me just a second  
 17 here.  
 18 CHAIRMAN DUNN: I think you're getting assistance  
 19 from behind.  
 20 Let me do it this way. Have you prepared any  
 21 documents that identify the six conversations you missed, and  
 22 attaching the reasons those six were missed?  
 23 MR. KUROWSKI: I've prepared a little cheat sheet  
 24 for myself that lists all the conversations and the reasons that  
 25 they were missed, yes.  
 26 CHAIRMAN DUNN: Is it something you will share  
 27 with the committee?  
 28 MR. KUROWSKI: Of course.  
 0061  
 01 CHAIRMAN DUNN: Okay, if we could, do you have  
 02 another copy of that?  
 03 MR. KUROWSKI: Yes.  
 04 CHAIRMAN DUNN: Thank you very much.  
 05 Let me go to one other area that I want to  
 06 discuss with you. That is starting on Page 19 of the transcript  
 07 that I've given you, right at the very top. There are two  
 08 lines. It says, "OK." "Alright, thanks, bye."  
 09 That's where the LADWP transcript ends  
 10 completely.  
 11 Yet, if you go further into the remaining  
 12 conversation, you'll find, for example, I just picked these out,  
 13 and I don't need to examine everything line by line, but on the  
 14 bottom of Page 23, you'll find again Steve from PGET, and Solis

15 at LADWP. And this is a fairly extensive discussion, going on  
16 for one, two, three, five pages, all relating to this entire  
17 transaction.

18 How did we miss this part in the LADWP version of  
19 the transcript?

20 MR. KUROWSKI: Um, you're going to have help me  
21 out again. I don't know when this conversation took place.

22 CHAIRMAN DUNN: The only way I know how to answer  
23 that is, when Suzanne came to LADWP's offices about a week or  
24 two ago, whomever at LADWP -- and by the way, she was very  
25 complimentary. Everybody was very supportive and willing to  
26 help her at every turn -- provided her access to what LADWP  
27 described as the full tape recordings relating to this time  
28 period.

0062

01 From that, she recorded that part of the  
02 transcript I just identified.

03 Go ahead.

04 MR. KUROWSKI: I see the transcript. I recognize  
05 some of the conversations now.

06 And I believe that we have -- this is one of the  
07 conversations that we captured subsequently.

08 Wait a minute. This is one of the conversations  
09 that showed up, I believe, then in the original PGET transcript;  
10 didn't it? I don't have that --

11 CHAIRMAN DUNN: Yes, I'm sorry. This -- part of  
12 this -- I'm sorry.

13 Of the remaining -- remember from -- the LADWP  
14 transcript stops at Page 19.

15 The full transcript as far as what was given to  
16 Suzanne goes on to Page 27. So, we basically have an additional  
17 nine or so pages that did not show up in the LADWP transcript at  
18 all, but did show up on the recordings when she went there to  
19 record it.

20 So what you see starting after the top two lines  
21 on Page 19, and for the remainder of the transcript, she  
22 transcribed from LADWP's.

23 And yes, parts of these are on the NEG  
24 transcript.

25 My question is, how did LADWP miss everything  
26 from the third line on Page 19 to the middle of Page 27?

27 MR. KUROWSKI: Um, I can't tell you which method  
28 right now caused me to miss this, but it was one of the two

0063

01 methods. And I have this cheat sheet in front of me that  
02 describes every conversation that I could find associated in  
03 that short timeframe, from roughly 1913 hours, that is 7:13  
04 p.m., on the 11th, through roughly 2200 hours, or 10:00 p.m. on  
05 the 11th. All right?

06 I've gone through and looked at all the  
07 conversations that we had originally, and all the conversations  
08 that PGET had originally, and I went back and listened, within  
09 that time period, I listened to all the conversations on all the  
10 tracks. And that's where I identified these additional six.

11 So, I have on this little cheat sheet an  
12 explanation for every one of the conversations: The four that  
13 PGET had that I didn't have, and the additional two I've  
14 identified.

15 And if I could take a few minutes to figure out  
16 which one lays up where, I could certainly tell you why I missed  
17 that conversation.

18 CHAIRMAN DUNN: I'm assuming, though, it falls  
19 into one of the two categories?

20 MR. KUROWSKI: Yes, sir.

21 CHAIRMAN DUNN: There's not third a category that

22 you've identified to explain why there were missing parts in the  
 23 LADWP version of the transcript?  
 24 MR. KUROWSKI: That's correct.  
 25 CHAIRMAN DUNN: Okay. And you were the only one  
 26 that listened to the original audio tapes; is that correct?  
 27 I'm not talking about your tape of the original  
 28 audio recordings, but you were the only one, as I hear your  
 0064  
 01 testimony, that listened to the original audio tapes to generate  
 02 a transcript.  
 03 MR. KUROWSKI: If we can call the original tape  
 04 the DAT tape, yes.  
 05 CHAIRMAN DUNN: You've got to pardon me for my  
 06 lack of sophistication on those issues, but yes, because that  
 07 word came up at the last hearing.  
 08 MR. KUROWSKI: I'm just trying to identify what  
 09 do you mean by original.  
 10 CHAIRMAN DUNN: I understand.  
 11 And you didn't go back to the original until  
 12 after we held our first hearing on this issue and there was an  
 13 alternate transcript, the NEG transcript, that surfaced; true?  
 14 MR. KUROWSKI: True.  
 15 CHAIRMAN DUNN: Okay. I'm just summarizing here  
 16 so I make sure I understand.  
 17 You were requested, you think, by Mr. Ward via  
 18 somebody else to go into work and do the identification of,  
 19 quote-unquote, "relevant" portions of the recordings; correct?  
 20 MR. KUROWSKI: Correct.  
 21 CHAIRMAN DUNN: You identified those. You then  
 22 recorded on the traditional tape, cassette tape, those portions  
 23 you identified as relevant?  
 24 MR. KUROWSKI: Correct, though I'd like to add  
 25 something to clarify.  
 26 I'm not sure that I ever received instructions  
 27 from -- from Mr. Ward to make a recording. My instructions were  
 28 probably more general, something like, what the heck is going  
 0065  
 01 on? Find out.  
 02 CHAIRMAN DUNN: Why did you make a recording?  
 03 MR. KUROWSKI: Because I found out.  
 04 CHAIRMAN DUNN: Okay, fair and simple enough.  
 05 Did somebody suggest to you by this time that we  
 06 needed a transcript, we needed a tape recording of the relevant  
 07 passages?  
 08 MR. KUROWSKI: That developed over the next  
 09 couple days, yes.  
 10 CHAIRMAN DUNN: But you recorded it on those  
 11 days?  
 12 MR. KUROWSKI: I had the recordings done,  
 13 essentially, Sunday night, I believe the 23rd of June.  
 14 CHAIRMAN DUNN: My question then is, are you the  
 15 individual who made the decision, without any input or request  
 16 from any other source, to record, quote, "relevant," unquote,  
 17 passages of the November 11th transactions?  
 18 MR. KUROWSKI: To the best of my recollection,  
 19 yes.  
 20 CHAIRMAN DUNN: To the best of your recollection.  
 21 Is there somebody else I might want to talk about this?  
 22 MR. KUROWSKI: No, I'm sorry. I wanted wiggle  
 23 room.  
 24 CHAIRMAN DUNN: I know. That's why I was trying  
 25 to close the wiggle room.  
 26 When you completed your cassette tape recording  
 27 of the passages you identified as relevant, that was turned over  
 28 to a representative of the City Attorney's Office?

0066

01 MR. KUROWSKI: Correct.  
 02 CHAIRMAN DUNN: And to your knowledge, then,  
 03 somewhere, presumably within the City Attorney's Office, your  
 04 cassette tape was transcribed?  
 05 MR. KUROWSKI: Correct.  
 06 CHAIRMAN DUNN: Did you make a comparison then of  
 07 your cassette tape with the version of the transcript that was  
 08 prepared of that cassette tape?  
 09 MR. KUROWSKI: Yes, I did.  
 10 CHAIRMAN DUNN: Was it accurate?  
 11 MR. KUROWSKI: I was part of a crew that -- that  
 12 corrected some small inaccuracies and created the final  
 13 transcription.  
 14 CHAIRMAN DUNN: Let's first identify who else was  
 15 involved in the crew?  
 16 MR. KUROWSKI: Myself, Mark Ward, and Marcia  
 17 Kamine.  
 18 CHAIRMAN DUNN: Marcia, who is the one that is  
 19 here from the City Attorney's Office. Okay.  
 20 When you say small corrections -- as you can  
 21 tell, the committee's hyper-vigilant on these issues now -- I'm  
 22 not asking for identification of each correction, but what are  
 23 you referring to when you say you made small -- the team made  
 24 small corrections?  
 25 MR. KUROWSKI: We counted how many times he said  
 26 "Um," and made sure there was that many "Ums" in there.  
 27 We corrected -- we corrected any grammatical  
 28 mistakes or omitted words.

0067

01 It was just mostly sort of a proofreading, if you  
 02 would, a proof-listening of the tape one third time.  
 03 CHAIRMAN DUNN: Mechanically how was it done? Do  
 04 you sit around a conference table, play the cassette tape, and  
 05 compare it to the transcript that was generated by the City  
 06 Attorney's Office?  
 07 MR. KUROWSKI: Correct.  
 08 CHAIRMAN DUNN: Did you find any, other than  
 09 minor "Ums" and so forth, errors in the transcript?  
 10 MR. KUROWSKI: I don't believe that we did. I'm  
 11 sure that we didn't, because none come to mind. Nothing --  
 12 nothing salient, nothing -- the transcripts were near complete.  
 13 CHAIRMAN DUNN: From the original version of the  
 14 transcript, were there any small, medium, or large passages of  
 15 the transcript that were omitted in the final version?  
 16 MR. KUROWSKI: No, sir.  
 17 CHAIRMAN DUNN: So, everything that you recorded  
 18 is found in the final version that LADWP submitted this  
 19 committee?  
 20 MR. KUROWSKI: Yes.  
 21 CHAIRMAN DUNN: And did anybody ever suggest  
 22 going back and checking the original recordings again, prior to  
 23 our having the hearing?  
 24 MR. KUROWSKI: No.  
 25 CHAIRMAN DUNN: Other than how you identified  
 26 certain missing passages from the full recording of the events  
 27 on November 11th, 2000, in your mind, that explains all the  
 28 omitted passages; is that a fair statement?

0068

01 MR. KUROWSKI: Yes, sir.  
 02 CHAIRMAN DUNN: Questions from the rest of the  
 03 committee? Mr. Drivon.  
 04 MR. DRIVON: The format that these digital  
 05 recordings are contained in is a DAT?  
 06 MR. KUROWSKI: Correct.

07 MR. DRIVON: And that DAT is what, recorded off a  
08 hard drive that originally contains the data when it's  
09 originally recorded?

10 MR. KUROWSKI: My understanding is that for a  
11 tape module, that there's a hard drive portion and two DAT tape  
12 decks for each module.

13 One module is responsible for recording all the  
14 telephone calls associated with the wholesale marketing group.

15 The hard drive and one of the DAT tape portions  
16 are recording simultaneously. The hard drive provides an  
17 immediate play-back function. The DAT tape is making a  
18 recording to keep permanently.

19 The second DAT tape deck is in a standby mode, so  
20 that when the first one becomes full, the second one can start  
21 automatically. Or alternately, if there needs to be a search  
22 done on a previously recorded tape, you use the standby deck,  
23 the one that's open. Take the standby tape out, put the  
24 previously recorded tape in, and -- and play it back, do the  
25 search.

26 MR. DRIVON: Now, is it possible to restore that  
27 DAT tape to the hard drive?

28 MR. KUROWSKI: Is it possible to restore that DAT  
0069 tape to the hard drive.

02 Possible's a big word, but I don't believe that  
03 anybody, short of a Dictaphone person, would be able to  
04 accomplish something like that.

05 MR. DRIVON: We've been told that the technology  
06 doesn't exist, at least at LADWP, to copy in digital form those  
07 recordings.

08 Is that your understanding?

09 MR. KUROWSKI: I believe that the DAT tapes are  
10 recorded in a proprietary format, so that only -- for instance,  
11 at the ECC, tapes made from Module 2 are only played -- can only  
12 be played back in Module 2 and cannot be played back in  
13 Module 1. And the same is true for Module 1 tapes. So that the  
14 tapes need to be module-specific.

15 We don't have a mechanism at the ECC to record  
16 digitally-to-digital the DAT tapes. We have to play the tapes  
17 through the module play-back feature, and we can record either  
18 electronically, that is, we could get a set of jacks and play  
19 into a recording device, or in this case, play out into the air  
20 and then record through a PC speaker the output.

21 MR. DRIVON: So, you can, through the use of  
22 jacks, you can produce an analog copy of the digital tape?

23 MR. KUROWSKI: Through the use of jacks or just  
24 recording in the air, correct.

25 MR. DRIVON: And the digital monitor -- excuse me  
26 -- the digital form could only be reproduced in a format that  
27 would be playable on some other device, like a computer hard  
28 drive, can only be done by the software supplier?

0070 01 MR. KUROWSKI: I believe the answer to your  
02 question is yes, that the digital tape that's produced is only  
03 readily playable in a Dictaphone supplied device.

04 MR. DRIVON: And the translation of that in  
05 digital form would then have to be done by Dictaphone?

06 MR. KUROWSKI: Dictaphone or some other expert.

07 MR. DRIVON: Okay.

08 We've asked a couple of times for digital copies  
09 of that -- of those tapes. And we've been told that the  
10 technology didn't exist, at least at LADWP.

11 My question is, whether or not there's been any  
12 contact by LADWP with Dictaphone, or anybody else, that could  
13 get us a digital -- a copy of that digital information in

14 digital format? Because, we have people who can look at that  
 15 and take information from it.  
 16 Has anything like that been done?  
 17 MR. KUROWSKI: I don't have any first-hand  
 18 knowledge of anything like that being done, though -- period.  
 19 CHAIRMAN DUNN: Thank you for the punctuation.  
 20 MR. DRIVON: Is there someone besides Mr. Wiggs  
 21 that we could ask that that contact be made with Dictaphone or  
 22 someone, so that we could be supplied with digital copies of  
 23 that information?  
 24 Or should I just ask Mr. Wiggs, since he's here?  
 25 MR. KUROWSKI: I suppose -- I suppose that we're  
 26 willing to help you in whatever fashion you need.  
 27 MR. DRIVON: I know that that copying can be  
 28 done. It's just a question of who can do it and where, and I  
 0071  
 01 think maybe you folks could find that information out and get  
 02 the copies done so that we can get it.  
 03 Can we do that?  
 04 MR. WIGGS: Yeah. I have no clue, but I am more  
 05 than happy to find out if you're correct, that they can be  
 06 copied, and if there's a way that we can facilitate getting that  
 07 done if that helps you, then, to be able to look through all  
 08 this stuff faster and quicker.  
 09 MR. DRIVON: I appreciate it.  
 10 I have one other question, which was, as I  
 11 understand your testimony, you can essentially look for words or  
 12 phrases that are repeated within that particular set of DAT  
 13 tapes; that is correct?  
 14 MR. KUROWSKI: Negative.  
 15 MR. DRIVON: Not.  
 16 MR. KUROWSKI: We have -- as part of my initial  
 17 foray into the information available to us, we have real-time  
 18 marketer logs, all right? And most of those logs, if not almost  
 19 all of them, are on -- in a word -- are in word-based programs,  
 20 and so, I searched the files that contained the real-time logs  
 21 for words and phrases that I thought might be -- might lead me  
 22 someplace.  
 23 MR. DRIVON: I understand. Thank you.  
 24 CHAIRMAN DUNN: Mr. Kurowski, I've got just a  
 25 couple follow-up, and I know Senator Morrow has one. I think  
 26 we're nearing the end here.  
 27 I believe you were not present at our last  
 28 hearing on this specific issue. I don't think you were here  
 0072  
 01 that day.  
 02 MR. KUROWSKI: Correct, I was not.  
 03 CHAIRMAN DUNN: I'm assuming shortly thereafter,  
 04 you were advised by someone that there was an alternate  
 05 transcript out there, in this case it was from NEG; correct?  
 06 MR. KUROWSKI: Correct.  
 07 CHAIRMAN DUNN: Do you recall how soon after our  
 08 hearing that you received notification that there was an  
 09 alternate transcript?  
 10 MR. KUROWSKI: I suspect it may have even been  
 11 that evening.  
 12 CHAIRMAN DUNN: When is it that you returned,  
 13 then, to re-examine the original tapes of the transactions of  
 14 November 11th?  
 15 MR. KUROWSKI: I think it was that evening,  
 16 because I believe I started up again that evening.  
 17 CHAIRMAN DUNN: Who was it that contacted you  
 18 about the existence of an alternate transcript?  
 19 MR. KUROWSKI: I'm pretty sure it was Mark Ward.  
 20 CHAIRMAN DUNN: Did Mr. Ward request that you go

21 back and re-examine the original tapes?  
 22 MR. KUROWSKI: In as many words, I suppose he  
 23 did.  
 24 CHAIRMAN DUNN: Okay, well put.  
 25 I'm assuming then if you went back to the  
 26 original tapes that evening, that you discovered the omitted  
 27 passages; is that correct?  
 28 MR. KUROWSKI: I discovered at least some of them  
 0073  
 01 that evening.  
 02 CHAIRMAN DUNN: The reason I asked you that  
 03 question is, and please correct me if I'm wrong, and you  
 04 probably don't even know whether this happened.  
 05 I don't think we received any input from LADWP  
 06 advising us of your findings after re-visiting the original  
 07 tapes. It's at least my memory, which is oftentimes incorrect,  
 08 that we didn't make that discovery until Suzanne came to LADWP  
 09 and listened to the recordings herself, which I believe was  
 10 about a week or so after our hearing.  
 11 Mr. Shiner, do you have any different information  
 12 on that?  
 13 MR. SHINER: I have no information on that at  
 14 all.  
 15 CHAIRMAN DUNN: Okay.  
 16 Go ahead. Just identify yourself for the record.  
 17 MS. KAMINE: I am Marcia Kamine.  
 18 I believe that the hearing we had was on a  
 19 Thursday, and Suzanne began --  
 20 CHAIRMAN DUNN: Was there Monday.  
 21 MS. KAMINE: -- was there Monday. So, it was  
 22 four days.  
 23 CHAIRMAN DUNN: I guess it's a rhetorical point  
 24 more than anything else, Marcia, that given the rather high  
 25 level of consternation the committee had, versus the alternative  
 26 transcript, that if Mr. Kurowski had discovered it the evening  
 27 of, or at least some of the omitted passages on the evening of  
 28 our hearing, that we would have received some word from LADWP.  
 0074  
 01 We did not.  
 02 It was Suzanne, and it took her several days to  
 03 actually transcribe it, because, as you know very well, it's  
 04 painful to transcribe those tapes and get them accurate.  
 05 I think Marcia is smiling back there, because it  
 06 indeed is.  
 07 Senator Morrow, you had a few questions.  
 08 SENATOR MORROW: I think they're questions.  
 09 Let me just share with you what I'm struggling  
 10 with.  
 11 I've got your cheat sheet here. And I'll go  
 12 through it, and I'll compare all the transcripts and try and see  
 13 whether it washes out that three of the conversations were  
 14 missed because they were in some other channel versus Channel  
 15 One, I guess, versus other three conversations or so that were  
 16 missed because of the lack of the interval on the tape. I  
 17 understand your point. I haven't had time, obviously, to go  
 18 through that.  
 19 Here's what I'm struggling with. I mean, here it  
 20 is.  
 21 I'm given to understand that a staff person in  
 22 the district office of Senator Dunn, Suzanne, who presumably --  
 23 I know Senator Dunn surrounds himself with highly competent  
 24 people.  
 25 CHAIRMAN DUNN: She happens to have been my legal  
 26 secretary for almost 20 years.  
 27 MR. KUROWSKI: I knew that.

SENATOR MORROW: There you go.

28  
0075

01 But certainly, Suzanne or anyone else from the  
02 district office, I mean, we're not talking about one of the  
03 committee staff or Mr. Drivon going down there, can go down  
04 there, DWP, and pick up all the conversation, as I understand  
05 that she did, that are in this example of pages 1 through 27,  
06 some how missed by the so-called experts, whose information is  
07 in your possession, Department of Water and Power.

08 That's just very difficult for me to accept. I  
09 am struggling with that.

10 And I can only come up with two conclusions, and  
11 it goes to my question before. I mean, either there was an  
12 intentional omission.

13 Or, quite frankly, probably the best case  
14 scenario for DWP, and I think it would be indicative of the  
15 behavior of DWP at least for the last almost year-and-a-half,  
16 you didn't give a damn. You didn't take this investigation  
17 serious enough to be thorough and to comply with the subpoena.

18 I just don't know of any other alternative  
19 besides those two.

20 CHAIRMAN DUNN: Okay. Anything else, Mr. Drivon?  
21 Anybody else?

22 No questions.

23 You're welcome to make any comments you want,  
24 Mr. Kurowski, at this point in time regarding this particular  
25 issue. Anything we've omitted, or anything you want to add?

26 MR. KUROWSKI: Yes, there is one thing I need to  
27 add.

28 CHAIRMAN DUNN: Please.

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01 MR. KUROWSKI: I'm sorry. I'd like apologize to  
02 this committee for missing those conversations.

03 I'd like to apologize to the Department of Water  
04 and Power for missing those conversations.

05 I did the best job I could at the time, given the  
06 time I had to work with. And I don't think anything that you  
07 guys could do is going to impact what I am going to feel myself  
08 about having lost those conversations. And I'm sorry.

09 SENATOR MORROW: Mr. Chairman, if I might, and  
10 with all due respect to Mr. Kurowski, and I respect the fact  
11 that you're here and accepting that, you're stating your  
12 apologies and the like.

13 Don't take my comments to be directed at you  
14 personally. I understand. You were the person that was in  
15 charge of listening to the tapes and recording the tapes.

16 And thus, I think it was in the last hearing I  
17 mentioned with Mr. Perot, principle of leadership is,  
18 accountability goes downward. You would be the downward  
19 employee responsible for this particular action.

20 My comments were directed for LADWP in general.

21 While accountability is directed downward, responsibility is  
22 directed upward, to higher management. And any way you look at  
23 it, you were not given sufficient direction, or personnel, or  
24 whatever it might be, to do this job completely and thoroughly.

25 That's the vein in which my comments should be  
26 taken. I want to clarify that for the benefit of the committee  
27 and the public.

28 CHAIRMAN DUNN: Well stated, Senator Morrow.

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01 Unless, Mr. Wiggs or Mr. Shiner, there's anything  
02 else to add, I'll wrap up.

03 MR. SHINER: Nothing to add.

04 CHAIRMAN DUNN: We certainly do welcome new  
05 blood, if I may say so, Mr. Wiggs, Mr. Shiner. I personally

06 hope we have a dramatic change, obviously, in LADWP's behavior.  
 07 As to the transcript issue, I'm not going to  
 08 offer a motion today. I would like to review these notes that  
 09 you prepared, Mr. Kurowski. We may have some follow-up  
 10 questions.

11 If it is the intention of the committee to move  
 12 forward with contempt as to the transcript submission,  
 13 Mr. Shiner, you will certainly be advised well in advance, and  
 14 certainly given an opportunity to both submit position papers  
 15 ahead and appear at our next hearing on this particular issue,  
 16 which I said most likely will be that first week in August.

17 MR. SHINER: Thank you. Appreciate that.

18 CHAIRMAN DUNN: However, we do have a motion for  
 19 contempt that was made by Senator Johannessen following Senator  
 20 Morrow's presentation.

21 We don't have a quorum here. The Chair will make  
 22 that motion at the next hearing. The committee will vote at  
 23 that time.

24 Yes, Mr. Shiner, as requested earlier, can you  
 25 submit additional materials, et cetera, between now and then?  
 26 Of course. We're not going to close the door to that. Our  
 27 intent is never to just do contempt for contempt purposes. We  
 28 want to get what the committee's looking for.

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01 But obviously, the track record here on this  
 02 issue, unrelated to the transcript which is a separate issue, as  
 03 laid out by Senator Morrow, and Mr. Drivon, and Mr. Chavez, is  
 04 not a pretty sight.

05 We will move forward with that motion and vote at  
 06 our very next hearing.

07 Unless there's anything further to be added by  
 08 anyone, we are adjourned.

09 Thank you.

10 [Thereupon this portion of the  
 11 Senate Select Committee hearing  
 12 was terminated at approximately.  
 13 4:11 P.M.]

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# 01 CERTIFICATE OF SHORTHAND REPORTER

02

03 I, EVELYN J. MIZAK, a Shorthand Reporter of the State  
 04 of California, do hereby certify:

05 That I am a disinterested person herein; that the  
 06 foregoing transcript of the hearing of the Senate Select  
 07 Committee to Investigate Price Manipulation on the Wholesale  
 08 Energy Market was reported verbatim in shorthand by me, Evelyn  
 09 J. Mizak, and thereafter transcribed into typewriting.

10 I further certify that I am not of counsel or  
 11 attorney for any of the parties to said hearing, nor in any way  
 12 interested in the outcome of said hearing.

13 07-16-02.TXT  
14 IN WITNESS WHEREOF, I have hereunto set my hand this  
15 \_\_\_\_\_ day of \_\_\_\_\_, 2002.  
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EVELYN J. MIZAK  
Shorthand Reporter

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